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ABSTRACT

This report contains the recommendations adopted by the National Advisory Committee on Juvenile Justice and Delinquency Prevention, 1979. Proposed standards and strategies are presented in the first five chapters. Each standard is followed by a source list and an explanatory commentary about its underlying premises and its relationship to other recommendations. Consistent and conflicting positions from other authorities are included, and specific recommendations for implementation are offered. The chapter on Prevention Function includes a definition of delinquency prevention and 37 prevention strategies. The Administration Function chapter contains standards on the role of local, state, and federal government levels in the juvenile service system; the Intervention Function chapter provides criteria and guidelines for intervention by public officials. The Adjudication Function chapter recommends the establishment of a family court; the Supervision Function chapter is directed to agencies supervising juveniles and families subject to the jurisdiction of the family court. The sixth chapter presents a general implementation plan outlining criteria for assessing the various available implementation mechanisms, and two implementation strategies which appear to meet those criteria. (Author/NRB)

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U.S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention

Standards for the Administration of Juvenile Justice

Report of the National Advisory Committee for Juvenile Justice and Delinquency Prevention

July 1980

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LETTER OF TRANSMITTAL

To the President and Congress
of the United States:

I have the honor of transmitting herewith the Report of the National Advisory Committee for Juvenile Justice and Deliquency Prevention: *Standards for the Administration of Juvenile Justice*, prepared in accordance with the provisions of Section 247 of the Juvenile Justice and Delinquency Prevention Act (Public Law No. 93-415, as amended by Public Law No. 95-417).

The JJDP Act created a major Federal initiative to respond to the "enormous annual cost and unmeasurable loss of human life, personal security, and wasted human resources," caused by juvenile delinquency and delegated the responsibility for administering and coordinating the programs established under that initiative to the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration. As part of this effort, the Act called for development of national standards for the administration of juvenile justice. This report represents the culmination of the first phase of an ongoing process to generate improvements in the juvenile justice system. These standards provide direction for change and can be used as a benchmark for measuring progress toward improving the quality of justice for young people in the United States.

The Report, which reflects the basic principles and policies of the JJDP Act, offers specific strategies, criteria and approaches that can be used in accomplishing some of the important objectives of the Act. Over the past decade a number of state and national groups, including many supported by LEAA, have carefully re-examined existing laws and practices and formulated criminal and juvenile justice standards and model legislation. This effort, which has benefited from these activities, represents a significant contribution to the field in its own right. It will serve as an important resource for use by policy makers, planners, youth advocates, legislators, judges, juvenile services agency administrators and other juvenile justice professionals and practitioners in all parts of the country.

Respectfully submitted,

Ira M. Schwartz

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PREFACE

The National Advisory Committee on Juvenile Justice and Delinquency Prevention was established by Section 207 of the Juvenile Justice and Delinquency Prevention Act (Public Law No. 93-415 as amended by Public Law No. 95-417). It consists of twenty-one members appointed by the President to four-year terms, and includes individuals with special knowledge of delinquency prevention and treatment, the administration of juvenile justice, school violence, vandalism, or learning disabilities, as well as representatives of private voluntary organizations and community-based programs. By law, over one-third of the committee must be less than twenty-six years of age at the time of appointment.

Section 208(e) of the act directs the Chairperson of the National Advisory Committee to appoint a subcommittee of at least five members to serve as an Advisory Committee to the Associate Administrator on Standards for Juvenile Justice, to assist the full body in:

- Supervising the review of existing reports, dates, and standards relating to the juvenile justice system in the United States by the National Institute for Juvenile Justice and Delinquency Prevention;
- Recommending standards for the administration of juvenile justice at the federal, state, and local levels; and
- Recommending federal, state, and local action to facilitate adoption of these standards throughout the United States.

This report is submitted pursuant to the National Advisory Committee's standards-setting responsibility. It contains the recommendations adopted by the National Advisory Committee on September 21, 1979. The report represents the culmination of more than four years of effort guided by the vision, dedication, and diligence of Lawrence Semski, Wilfred Nuernberger, and Margaret C. Driscoll who served as chairs of the Subcommittee on Standards.

The National Advisory Committee urges all those involved in efforts to prevent and combat youth crime, programs providing assistance to juveniles and their families, and courts and agencies comprising the juvenile justice system, to examine these standards closely. The Committee recognizes that there will be disagreement with some of its proposals, that local problems and practices do differ, and that implementation of the standards must be accompanied by vigorous evaluation. The needs for changes in these recommendations is inevitable as the experience from the implementation process becomes known and the Committee stands ready to make any necessary refinements. However, the National Advisory Committee is confident that, taken as a whole, the standards and strategies contained in this volume represent a workable response to many of the criticisms which have been leveled against the American system of juvenile justice in recent years, and that when implemented, they will help to reduce delinquency and materially improve the administration of justice for the young people of our nation.

C. Joseph Anderson, Chairperson, 1978-1982

J. D. Anderson, Chairperson, 1975-1978

FOREWORD

Standard—that which serves as a test or measure, or a flag or ensign around which people unite for a common purpose.[1]

In its initial report submitted in September 1975, the Subcommittee on Standards outlined the tasks before it:

- To propose a set of recommendations addressing the full range of law enforcement, judicial, prevention, correctional, service and planning activities affecting youth;
- To organize these recommendations so that groups and agencies performing similar functions would be governed by the same set of principles; and
- To distill the best thinking from the standards, models, and public policies proposed and adopted by national and state standards, commissions, professional organizations, advocacy groups, and agencies.[2]

It also pledged to submit the first group of standards by September 1976, and the remainder six months thereafter.

Following submission of this plan, work began in earnest. Meeting on the average of every six weeks, the subcommittee reviewed materials presented by the National Institute for Juvenile Justice and Delinquency Prevention on the patterns of existing state laws, the proposed recommendations of the National Task Force on Standards and Goals for Juvenile Justice and Delinquency Prevention, the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, and the positions adopted by other state and national organizations and agencies, and considered draft standards. By September 1976, the standards on adjudication had been completed.[3] The work continued and in March 1977, the standards on administration, intervention, and supervision, together with a set of prevention strategies, were submitted in "advanced draft" form—i.e., without the explanatory commentary.[4]

The pace then slowed as the personnel from the Office of Juvenile Justice and Delinquency Prevention who had served as staff to the subcommittee, became increasingly engaged in other duties, and as uncertainty grew over whether the authority to recommend standards under the Juvenile Justice and Delinquency Prevention Act[5] was vested in the subcommittee or full National Advisory Committee.[6] With the passage of the 1977 Amendments to the Act [7] clarifying that the duty to recommend standards lay with the National Advisory Committee as a whole, and with the advent of an independent staff of consultants for the committee, work on the commentary was renewed. By August 1979, the entire set of standards, strategies, and commentary was ready for final review, and after extensive discussion, this volume of recommendations was overwhelmingly adopted by the National Advisory Committee on September 21, 1979.

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[1] The Consolidated—Webster Comprehensive Encyclopedic Dictionary, 705 (F. Meine, ed. 1958).

[2] Report of the National Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice (September 1975).

[3] *Report* (September 30, 1976).

[4] *Report* (advanced draft, March 1977).

[5] Public Law 93-415, U.S.C. 5601 *et.seq.* (1976).

[6] Up to then, although the full National Advisory Committee had been kept fully abreast of the subcommittee's progress, commended its effort, and "generally endorsed" its proposals, the standards and strategies did not carry the weight of a National Advisory Committee recommendation.

[7] Public Law 95-417, 42 U.S.C. 5601 *et.seq.* (1978).

The volume is divided into six chapters. The first five contain the proposed standards and strategies and are divided along the functional lines noted above. The sixth chapter presents a general implementation plan outlining criteria considered in assessing the various implementation mechanisms available, and two implementation strategies which appear to meet those criteria.

Appearing directly beneath each standard are the primary sources from which it was derived. The terms "see generally" or "see also" preceding a citation denote that while the recommended standard is drawn in large part from the listed source material, there are some significant differences in the positions taken. A brief commentary follows the list of sources. The commentary provides an explanation of the standard, the premises on which it is based, and its relationship to other recommendations in the volume, as well as a discussion of the consistent and conflicting positions found in other authorities. The commentary to several standards also contains specific recommendations for facilitating their implementation. After the commentary for each standard is a list of the standards in the volume most closely related to it.

The chapter on the Prevention Function includes a recommended definition of delinquency prevention together with thirty-seven possible prevention strategies. These strategies are presented not as prescriptive standards, but as illustrations of the types of services and actions which states and communities should consider in developing a comprehensive prevention program that addresses local needs and takes advantage of already available resources. Because of the myriad of possible programs and actions which could be subsumed under the rubric of delinquency prevention, the variety of local problems which these alternatives could be used to address, and the lack of information concerning the effectiveness of particular approaches, it is inappropriate to attempt to define, at a national level, what the exact content of a state or locality's prevention program should be. Accordingly, the strategies are intended as a road map showing important possible routes to consider rather than as a compass indicating the one direction to effective prevention.

The recommended tool for states and communities to determine the routes which they will take is the coordinated planning process delineated in the administration chapter. To assist in this planning process, the suggested strategies are classified according to the theoretical perspective on which they are based, the methods which they use, and the agency, program or societal institution which they are designed to affect. This framework is intended to facilitate the transition from planning to action and the development of some consensus on the focus for prevention programs. It was the Committee's view that without such a consensus, there will be little coherence on or coordination among many state and local prevention efforts. A fuller explanation of the organization and purpose of the framework appears in the chapter's introduction.

The chapter entitled the Administration Function, contains standards on the role and responsibilities of the local, state and federal levels of government for the planning, management, and evaluation of the juvenile service system. The standards emphasize the need for a coordinated, multi-level planning process. This process is intended to encompass the identification of prevention needs and resources, the development of a comprehensive prevention program consistent with those needs and resources, as well as the design and implementation of measures necessary to maintain and improve the operation of the traditional components of the juvenile justice system. Other series of standards within this chapter discuss the selection of the preservice and inservice training which should be offered to juvenile service system personnel; and the compilation, retention, correction, availability, and disposition of identifiable records pertaining to juveniles.

The Intervention Function chapter concentrates on the point at which a public official makes contact with a juvenile and/or family because of alleged delinquency or noncriminal misbehavior, or to protect a juvenile in danger of serious harm who has no adult with whom he/she has substantial ties, or who is willing and able to provide protection against that harm. Intervention does not automatically nor necessarily result in a referral to the intake unit and the family court. Such referral is only one of a number of options open to the intervening law enforcement officer, child protective service worker, or welfare or health official. Other options include counseling and releasing the juvenile, referring the juvenile and/or family to community services provided on a voluntary basis, or in some cases, doing nothing. The standards recommended in this chapter define the situations in which intervention is appropriate; set forth criteria to guide decisions to refer individuals to the intake unit and decisions to take a juvenile into custody; and delineate the procedures and rights which should apply following intervention. They reflect the principle of using the least restrictive or intrusive alternative to achieve the objectives of the intervention. Hence, it is anticipated that many interventions will continue to result in nothing more than a brief conversation or referral to services without coercion or continuing supervision. The chapter also includes recommendations on the role of specialized juvenile units in law enforcement agencies and juvenile specialists in patrol terms or units.

The standards on the Adjudication Function recommend establishment of a family court with jurisdiction over nearly all legal matters affecting children. In addition, they provide for the qualifications for and method of selection of family court judges and staff, the rights of the parties in judicial and administrative adjudicatory proceedings, some of the procedures which should apply to such proceedings, and the alternatives, criteria, and procedures for intake, detention, and dispositional decisions.

The final chapter of standards concerns the Supervision Function. It is directed to those agencies and programs supervising juveniles and families subject to the jurisdiction of the family court over delinquency, noncriminal misbehavior, neglect and abuse. Particular attention is given to the size and nature of and the services and staff which should be available in residential programs such as training schools, camps and ranches, group homes, foster homes, detention centers, and shelter care facilities. Although the National Advisory Committee strongly urges the reliance on community supervision, in-home services, and small community-based residential programs to the maximum extent possible, it recognizes that training schools and other large congregate facilities for juveniles will not disappear from the American landscape overnight. Accordingly, the standards in this chapter recommend that such facilities be structured and provided with the necessary services, staff, and resources to accomplish the treatment objectives they were established to perform. The Supervision chapter also contains recommendations regarding the operation of nonresidential programs and the services which should be available to persons placed in such programs; the rights of persons subject to court-ordered supervision; disciplinary, transfer, and grievance procedures; the use of mechanical and medical restraints; the creation of an ombudsman program; and the responsibility for operating supervisory programs.

Binding all these recommendations together are five basic themes:

I. The family remains the basic unit of our social order—governmental policies, programs, and practices should be designed to support and assist families, not usurp their functions;

II. Together with any grant of authority by or to a governmental entity must be the establishment of limits on the exercise and duration of that authority and mechanisms to assure accountability—guildelines and review procedures should be established for all intervention, intake, custody, and dispositional decisions;

III. Age is not a valid basis for denying procedural protections when fundamental rights are threatened—juveniles should be accorded the best of both worlds—"the protection accorded to adults—(and) the solicitous care and regenerative treatment postulated for children."[8]

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[8] *Kent v. United States*, 383 U.S. 541, 556 (1966).

IV. Whenever there is a choice among various alternatives, the option which least intrudes upon liberty and privacy should be preferred—"when you swat a mosquito on a friend's back, you should not use a baseball bat;"[9] and

V. When rehabilitation forms a basis for the imposition of restraints on liberty, an obligation arises to offer a range of services reasonably designed to achieve the rehabilitative goals within the shortest period of time—governmental intervention justified upon the doctrine of *parens patriae* trigger at least a moral duty to provide the resources necessary to fulfill the promise of care and assistance.[10]

The standards are, of course, fully consistent with the Act's prohibitions against confinement of nonoffenders in detention and correctional facilities and the commingling of juveniles in any facility with adults accused or found guilty of having committed a criminal offense.[11]

These recommendations and the principles on which they are based must now undergo an intensive period of examination, testing, and evaluation in the field. Even though they have the benefit not only of the broad experience of the members of the National Advisory Committee over the years, and as indicated above, the thinking and research of other multidisciplinary standards-setting bodies and professional organizations, their impact singly and as a whole is still a matter of conjecture in many instances. Moreover, in this nation of diversity and this time of change, there may be more than one good standard and, as the committee's debates have shown, more than one path to attain an agreed upon goal.

Therefore, it should be clearly understood that these standards are not graven into stone. Pursuant to its responsibilities under the Act, the Committee will closely monitor the implementation and evaluation process, and will modify its recommendations wherever necessary in light of the impact, costs, and benefits of the standards, new research findings, and the comments received from practitioners, theorists, youth, and the public at large. For only in this way can individual standards truly serve as a test or measure and this set of recommendations become a flag or ensign around which people "unite for (the) common purpose" of improving the administration of juvenile justice.

The names of the many individuals who contributed to the preparation of this volume are listed elsewhere. But at this point a few special words of appreciation are in order: first, to the members of the National Advisory Committee and especially those who have served on the Subcommittee on Standards and spent countless hours and vast amounts of their energies thinking through, talking over, and working out these standards, often late at night and early in the morning, with candor, humor, and a willingness to listen; next, to Rich Foster and Wally Mlyniec, who undertook the massive task of completing the commentaries, and in their writing captured the spirit and illuminated the substance of the committee's proposals; also to Barbara Allen-Hagen of the NIJJDP Standards Programs and the other members of the staff of the Office of Juvenile Justice and Delinquency Prevention, Jeanne Halleck and the staff of A. L. Nellum and Associates, and Thomas Kane and the staff of Birchaven Enterprises, Inc. who have been on hand to provide the material, support, and assistance required to carry on this effort; and finally, to Dick Van Duizand, who has seen this project through from beginning to end and has contributed so much of himself in the process.

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[9] Chambers, "The Principle of the Least Restrictive Alternative: The Constitutional Issues," in the President's Committee on Mental Retardation, *The Mentally Retarded and the Law* 487 (1976).

[10] *See* Bazelon, "Implementing the Right to Treatment," 36 U.Chi.L.Rev. 742, 747 (1969).

[11] 42 U.S.C., §§5633(a) (12) and 13 (1978), 18 U.S.C.; §5035 (Com. Supp. 1979).

Margaret C Driscoll

Margaret C. Driscoll, Chairperson of the
Subcommittee on Standards, 1980

Lawrence Semski

Lawrence Semski, Chairperson of the Subcommittee
on Standards, 1977-1979

W. W. Nuernberger

Wilfred W. Nuernberger, Chairperson of the
Subcommittee on Standards, 1975-1977

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The opinions, recommendations and determinations contained herein are those of the National Advisory Committee for Juvenile Justice and Delinquency Prevention and do not necessarily represent the official position or policies of the U.S. Department of Justice.

THE PREVENTION FUNCTION

The Prevention Function

INTRODUCTION

This chapter concentrates on particular prevention strategies which the state and local units of government can consider in the development of their comprehensive plans. Because of the need for local problem identification and planning, and the uncertainty surrounding the impact of particular prevention efforts, the programmatic concepts contained in this chapter are presented as suggestions and points of reference for local, state, and federal decision makers rather than as prescriptive national standards. To facilitate the development of an ordered prevention plan, the suggested strategies have been arranged so as to illuminate the theoretical perspective on which they are based, the type of actions required to implement them, and the institution or activity which they emphasize.

Before examining the strategies and the manner in which they are presented, delinquency prevention itself must be defined. It was the conclusion of the National Advisory Committee that delinquency prevention should be viewed as:

> A process and the activities resulting from that process directed at encouraging law-abiding conduct and reducing the incidence of criminal activity of all youth under eighteen years of age except those who are receiving services on other than a voluntary basis as a result of contact with the juvenile justice system.

The Committee concluded further that the process and activities should be focused on assisting youth who lack appropriate access to family, school, and community conditions which promote law-abiding behavior, and understood a delinquent act to be a violation of a federal, state, or local statute or ordinance by a juvenile which would be designated as criminal if committed by an adult. *See* Standard 3.111.

A number of commentators have limited the definition of prevention to measures taken before a criminal act has actually occurred. *See, e.g.*, A. Cardarelli, J. P. Walker, and D. L. Billingsly, *The Theory and Practice of Delinquency Prevention in the United States: A Review, Synthesis and Assessment* 14 (1976). However, the Committee observed that although self-report surveys indicate the overwhelming majority or youth violate the criminal law once before their eighteenth birthday, relatively few commit repeated delinquent acts. Hence, limiting prevention to measures taken before commission of a delinquent act would, at least initially, severely limit the scope of prevention programs. The Committee noted further, that even after intervention on the basis of alleged delinquent conduct, most juveniles are not referred to the intake unit or the family court because of the insignificant nature of the act, the juvenile's age and prior conduct, and the availability of service alternatives. *See* Introduction to the Chapter on the Intervention Function, and Standards 2.11, 2.21, 2.221, and 3.342-3.343. Thus, law enforcement agencies or service programs, working with them, divert youth from the juvenile justice process, not only preventing further entry into the system, but also playing an important role, in many instances, in preventing the reoccurrence of delinquency. The National Advisory Committee concluded that where this diversion occurs without continuing supervision or the threat of prosecution if an offer of services is declined either initially or over a period of time, it properly remains within the realm of prevention. However, this does not imply that agencies and organizations providing prevention services could not also provide the same services for rehabiliative purposes.

As noted above, the framework used to present the suggested program strategies is designed to clarify the links between these strategies and the theories on the causes of delinquency. While it is recognized that the array of programs operating in most communities owe their existence to political considerations more than to the acceptance of any one theoretical model for reducing delinquency, the attempt to set forth these linkages is premised on the belief that identifying the underlying assumptions of proposed program strategies will help to coordinate the service delivery system and avoid the waste and frustration of having programs aimed at achieving the same objective, work against each other.

The framework is divided into four levels:

Theoretical Focal Point
Type of Prevention
Areas of Emphasis
Possible Strategy

The first level groups the various theories which attempt to explain why delinquency exists into three Focal Points: The Individual, Social Institutions, and Social Interaction. The Focal Point on the Individual includes a wide range of psychological and psychoanalytic theories which address the emotional or attitudinal complexes that underlie delinquent behavior. These theories encourage programs which rely on "increas[ing] self-understanding so that the individual can function in a prosocial manner in the home, school, work and/or the community." Cardarelli, *supra* at 22.

The Social Institutions Focal Point includes those theories which address the manner in which cultural and/or social patterns and institutions influence individuals to conform or deviate from societal norms. This perspective supports efforts for societal and institutional reform which will allow families to raise children who will act in a prosocial manner. Cardarelli, *supra* at 23.

Theories which examine the extent and quality of the relationships that occur within families, peer groups, racial and other societal groups in order to explain why delinquency exists are subsumed under the rubric of Social Interaction. This approach directs attention to the orientation process through which youth are labeled, and societal reaction to the deviant behavior. These theories urge programs which promote societal flexibility and tolerance as a means of decreasing the negative stigmatization associated with the official labeling process. Cardarelli, *supra* at 23.

The second level of the classification system, the types of prevention, refers to the manner in which specific strategies are employed. Four types of prevention are identified:

Corrective
Instructional
Mechanical
Redefinition

Corrective prevention strategies address the conditions which are believed to cause or lead to delinquent or criminal activity—e.g., poverty or a lack of adequate educational opportunities. This category constitutes the most common types of prevention. It is based on the principle that deviant behavior can be corrected through the elimination or neutralization of the causes of that behavior, and that juveniles exhibiting the deviant behavior tendencies can be prevented from becoming adjudicated delinquents through the correction of the conditions responsible for generating the delinquency behavior. *See* Cardarelli, *supra* at 15.

Instructional prevention relies on the threat of punishment to deter potential violators. This deterrence process attempts to discourage the potential offender by increasing the chances of detection, the penalty for delinquent behavior, and the awareness of those chances and penalties. National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, *Preventing Delinquency—A Comparative Analysis of Current Delinquency Prevention Theories* (1977).

Mechanical prevention includes strategies designed to make commission of delinquent acts more difficult through police or citizen surveillance, improved security, anti-theft procedures and environmental design. It also includes alteration of individual behavior patterns to limit vulnerability to crime. *See* Cardarelli, *supra* at 15; *Report of the Task Force, supra.*

The final type of prevention—redefinition—incorporates efforts to limit stigmatization by modifying or eliminating prohibitions and penalties for specific types of delinquent activity. *See generally Report of the Task Force, supra.*

The specific strategies under each Focal Point and Type, are divided into Areas of Emphasis roughly equivalent to the division of responsibilities among governmental agencies and private organizations. These Areas of Emphasis include the family, education, employment, health, recreation, religion, justice system, housing, and the media. Thus, a person with an interest in family services, for example, would examine the strategies listed under the Family (F) area of emphasis under each of the relevant theoretical and operational approaches.

It should be clearly understood that this list of strategies is not exhaustive nor intended to constitute a definitive "national youth policy." Rather, the strategies reflect issues which the National Advisory Committee believes are of particular importance. As indicated earlier, they are set forth as points of reference to assist states and local communities in developing broad, well-integrated plans, programs and policies, tailored to their specific needs and priorities. The national policies will evolve as these plans and programs are implemented and additional information about what measures are effective in preventing delinquency becomes available.

Focal Point: The Individual

Type of Prevention: Corrective

Area of Emphasis: Family

Strategy: Cor. F-1

Individual and Family Counseling

Provision of adequate individual and family counseling services to promote social adjustment, stability and family cohesion.

Commentary

There is general agreement among experts in the fields of juvenile justice and child development that the strength and stability of the family unit is crucial to the positive development and the social well-being of a child. Quite naturally, children look to family members for guidance and understanding in a world that is often confusing and difficult to understand.

There are times, however, when the family unit is unable to provide the necessary guidance. Dissonance due to marital discord or divorce, financial and other outside pressures, or deeply rooted psychological disturbances, may affect the life of the family, which in turn may damage a child's self-concept and world view. When this occurs, an environment is created wherein delinquent behavior or child neglect may result.

Intervention by means of individual counseling for parents and children may provide the direction and guidance needed to cope with stressful circumstances. Counseling can offer each participant the opportunity to understand his/her world, promote social adjustment and family stability, and assist in the rational resolution to problems before an actual crisis develops. Moreover, since internal conflicts often, and external pressures generally, involve all family members, counseling for the entire family permits solutions acceptable and beneficial to all. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.4 (1976).

Various counseling programs may be effective. Utilizing volunteer counselors and youthful professionals from the community may assist in lessening the social distance between worker and juvenile client. *See* A.E. Forture, *Images in the Looking Glass, A Study of a Counseling Center for Runaways* (N.C.J.R.S. Accession Number 09900.00.009625). Similarly, counseling for troubled parents has been effective when trained persons from the community are used, follow-up information regarding financial assistance, alcohol and drug abuse assistance are provided, and a 24-hour crisis intervention service is maintained. *See* Focal Point Social Institutions, Strategy, Cor. F-3 and Commentary. Group discussions, films and lectures may also help family members to recognize and deal with an impending crisis.

Many counseling measures have gained the confidence and respect of participants and community representatives alike. When utilized to the fullest, counseling programs have been found to be an effective program of great value to any community. *See* G.W. Carter, *Alternative Routes Project* (N.C.J.R.S. Accession Number 09900.00.025628).

Related Standards

1.111-1.114	Organization of the Local Juvenile Justice System
1.121-1.125	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel
1.51-1.56	Security and Privacy of Records

Related Strategies

Focal Point Individual:

Cor. F-2 Parent Training
Cor. F-3 Protective Services
Focal Point Social Institutions:
Cor. F-1 Provision for Basic Needs

Cor. F-2 Day Care
Cor. F-3 Crisis Intervention
Focal Point Social Institutions:
Mec. F-1 Behavior Patterns

Focal Point: The Individual
Type of Prevention: Corrective
Area of Emphasis: Family
Strategy: Cor. F-2 Parent Training

Provision of parent education and preparation programs to foster family cohesion and child development and adjustment.

Commentary

Educating parents to cope with the needs of children and the problems of raising them is an important factor in the development of a secure family environment. Very often parents and prospective parents have unrealistic expectations concerning the various stages of child-rearing due to a lack of knowledge or experience regarding proper parent roles and family life. Parent training programs can assist parents and prospective parents to establish a successful and cohesive family environment.

Parent training services may include training in prenatal and postnatal care, preparatory courses concerning the various stages of child development, and suggestions for methods to deal with those stages in an informed and rational manner. Practical information regarding finances and consumer protection can also be provided. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.3 (1976).

Through the use of these programs, prospective parents can develop skills relating to communicating with their children, expressing their feelings and needs effectively, and settling conflicts between competing needs in a fair and appropriate manner. Moreover, a range of effective and nonalienating techniques of child discipline can also be explored.

Staffing for parent training programs should consist of community-based nurses and paramedical personnel. Since problems regarding delinquency and neglect can easily be found through all segments of the community, parent training should not be directed toward any one group of people. To be most effective, parent training should be taught in secondary schools to boys and girls alike as a regular part of the curriculum. Additionally, adult education courses offered by schools, in conjunction with health agencies, can reach out to those beyond high school age who need refresher courses or basic education in parent effectiveness.

Strong, effective families are crucial to the development of secure, well adjusted children and a significant factor in reducing anti-social behavior. Parent training can further these goals.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.427	Planning Personnel
1.429	Administrative Personnel
1.51-1.56	Security and Privacy of Records

Related Strategies

Focal Point Individual:
Cor. F-1 Individual and Family Counseling
Cor. F-3 Protective Services
Focal Point Social Institutions:
Cor. F-1 Provision for Basic Needs
Cor. F-2 Day Care
Cor. F-3 Crisis Intervention
Focal Point Social Institutions:
Mec. F-1 Behavior Patterns

Focal Point:
The Individual
Type of Prevention:
Corrective
Area of Emphasis:
Family
Strategy: Cor. F-3
Protective Services

Provision of adequate protective services to children and families to facilitate domestic adequacy and stability.

Commentary

Without a doubt, the most critical manifestation of an inadequate family environment or serious parental difficulties is the existence of emotional or physical mistreatment of children. Such episodes usually foster feelings of rejection within the home, thereby shattering family life and the normal development process of a child. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.5 (1976) [hereinafter cited as *Report of the Task Force*]. Correlations have also been noted between child neglect and subsequent delinquent behavior.

When there is evidence that such a crisis has occurred or is about to occur, protective services should be utilized. The efforts of protective services are directed toward preserving the family unit through voluntary efforts rather than through the use of the coercive power of the juvenile justice system. Programs are directed both at understanding and assisting troubled parents, changing behavior patterns in the home, and at mitigating the harmful effects that mistreatment has on the children.

Several approaches have shown considerable promise for changing the behavior of abusive parents. By providing intensive counseling and training to those parents who were themselves victims of child abuse, child abuse can be significantly reduced. *See generally* R. E. Helfer and C. H. Kempe, *The Battered Child* (1968). Additional service components might encompass outreach activities to discover families that may need services as well as family advocacy programs which focus on problems within the general community that might contribute to abuse or neglect. *Report of the Task Force, supra* at Standard 3.5 In addition, 24-hour crisis intervention service is a vital component for providing complete and adequate protective services to the entire community. It helps prevent the severence of family ties and keeps coercive intervention to a minimum. *See C.L. Johnson, Two Community Protective Service Systems: Comparative Evaluation of Systems Operations* (N.C.J.R.S. Accession Number: 09900.00.046703). *See also* Focal Point Social Institutions, Strategy, Cor. F-3 and Commentary.

Effective staffing is essential to the implementation of this strategy. Personnel should be specially trained to deal with cases of child abuse and neglect. *See* Standards 1.41 and 1.425. In addition, the participation of community volunteers knowledgeable and sensitive to this problem are a vital part of the protective service operation. Evaluation of past operations suggests that active community involvement is also vital to program success. *See* V. De Francis, *Status of Child Protective Services* (N.C.J.R.S. Accession Number 09900.00.0049037).

A basic issue which should be considered by a community in the delivery of protective services is that of clearly defined goals and objectives. An agency should first evaluate the extent of its community needs, then develop specific and tangible goals based on the resources and manpower available. Often an agency will try to do too much based on insufficient resources and limited manpower, thus diminishing its chances of success. Regular consultation with other groups and organizations through a type of referral network will foster cooperation between community groups and result in logical planning, financing, and service implementation. *See* Standards 1.21-1.29 and Commentary.

Protective services can be a valuable asset when dealing with the serious problem of child abuse and neglect. When coordinated and administered effectively, such a program can greatly aid a community in preserving family units, thereby establishing greater stability and control for all. However, protective services have generally been considered the least developed in the area of child welfare. Many communities do not provide protective services and often depend on police and the courts to handle the problem of abused and neglected children. Often these groups possess few alternatives for placement of children or services to parents. *See Report of the Task Force, supra* at Standard 3.5. Staff of each are seldom trained in this area. Even when training occurs, other responsibilities often take precedence. Those government officials and agencies considering policy and procedure in the implementation of this strategy should critically review the local procedures for handling this problem and draft proposals to minimize the use of the police and courts.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.212-1.125	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel
1.51-1.56	Security and Privacy of Records

Related Strategies

Focal Point Individual:

Cor. F-1	Individual and Family Counseling
Cor. F-2	Parent Training

Focal Point Social Institutions:

Cor. F-1	Provision for Basic Needs
Cor. F-2	Day Care
Cor. F-3	Crisis Intervention

Focal Point Social Institutions:

Mec. F-1	Behavior Patterns

Focal Point: The Individual
Type of Prevention: Corrective
Area of Emphasis: Health/Mental Health
Strategy: Cor. H-1
Diagnostic Services

Provision of comprehensive physical and mental health diagnostic services which are readily available and obtainable by children and families at all stages of child development from the prenatal through the adolescent stages of maturation.

Commentary

Diagnostic services which identify the physical and mental health problems of juveniles can effectively alleviate some of the conditions which may contribute to delinquency. Like preventive services, Focal Point Individual, Strategy Cor. H-2, diagnostic services address health problems in their early stages. Preventive service personnel may be instrumental in referring a juvenile and his/her family to a diagnostic service center. However diagnostic services are initiated, they are effective in detecting health problems before they become serious and in informing the public of the importance of early detection.

Diagnostic services assist in the prevention of crime in a number of ways. Any physical or mental problem which negatively affects a juvenile's health and well-being and thereby his/her performance in school or work, can have a detrimental effect on that juvenile's self-image. This lack of confidence may in turn cause the juvenile to drop out of school or render him/her unable to retain employment. Once a juvenile with a poor self-image is left with empty and unstructured time and no stake in the community, conditions are conducive for misbehavior.

Emotional and other health problems may result from nutritional deficiencies, venereal disease, hearing and sight disabilities, and other learning impairments. Diagnostic service personnel can detect these problems early and refer the child for needed treatment. In addition, diagnostic services can be utilized by other family members seeking to cope with emotional or physical problems such as alcoholism or drug abuse. *Accord,* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 3.1 and 3.2 (1976) [hereinafter cited as *Report of the Task Force*].

A comprehensive health plan must encompass both prevention and diagnostic services. Juveniles should be encouraged to independently seek medical care, even in the earliest stages. Providing easy access to services is demanding but crucial. If diagnostic services are to be effective in identifying health problems and initiating treatment, then the existence of such services must be widely known and easily accessible. *See also* Focal Point Individual, Strategy, Cor. H-2 and Commentary.

An effective way to guarantee that services meet the community's needs and are widely used is to initially establish a local planning authority as set out by Standard 1.111 to develop a juvenile service plan as anticipated by Standards 1.112, 1.113, and 1.122. State administered diagnostic centers are emerging in this country and some commentators recommend even greater state administrative involvement in the provision of diagnostic and all other types of services. The National Advisory Committee also contemplates federal participation in juvenile justice programs, *see* Standards 1.131-1.134, and adequate funding for these diagnostic centers through federal and state sources. *See* Standards 1.124 and 1.133.

The staffing requirements for diagnostic services is not specifically set out in this strategy but other standards are instructive. *See* Standards 1.41 and 1.425. Knowledge of and sensitivity to the needs of juveniles and their special problems are essential. Qualifications and an ability to develop and maintain good rapport with juveniles are also important.

Uncaring and unresponsive personnel can deter juveniles from seeking professional help and must be avoided. *See Report of the Task Force, supra* at Standard 3.1.

Nonprofessional volunteers may be used to strengthen diagnostic services. Lay volunteers are capable of handling many of the components of the total diagnostic process and can be used to expand the availability of diagnostic services in a community. While locating competent and willing volunteers may be difficult, the implementation of a comprehensive health care program can instill the kind of feeling which fosters volunteer action.

In addition to employing competent and sensitive staff numbers, other means should be used to encourage juveniles and their families to use these programs. For example, advertising campaigns could be initiated. In addition community diagnostic centers could involve youth in planning programs by forming youth councils to define community problems and to suggest possible solutions. *See Report of the Task Force, supra* at Standard 3.2. Juveniles could also be hired as paraprofessionals. *Id.* Any action which attracts juveniles to available health services should be encouraged. Active involvement in such services will result in juveniles utilizing these services, thereby alleviating some of the conditions conducive to misbehavior. *See Report of the Task Force, supra* at Standard 2.7. By attracting juveniles and their families to health services as both patients and participants, this community program can become a resource of great value to improve health and prevent criminal activity.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:
Cor. H-2 Preventive and Maintenance Services
Cor. H-3 Treatment Services

Focal Point: The Individual
Type of Prevention: Corrective
Area of Emphasis: Health/Mental Health
Strategy: Cor. H-2
Preventive and Maintenance Services

Provision of comprehensive physical and mental health preventive and maintenance services available to children and families at all stages of child development.

Commentary

Comprehensive physical and mental health preventive and maintenance services are an essential starting point in addressing the problems of juveniles. Preventive services must include community awareness activities such as classes, workshops, pamphlets, multi-media materials, speakers, and newsletters to disseminate information about issues of importance. At a minimum, information should be provided regarding nutrition, sex education, child abuse, and techniques for the early detection of breast cancer, sickle cell anemia, and veneral disease. Maintenance services should include routine medical check-ups, eye and ear examinations, dental care, and immunization for juveniles. Prenatal and postpartum care for mothers should also be provided.

Preventive and maintenance services have several purposes. While primarily an educational and health care tool, such services also assist in preventing delinquent behavior. Adequate health care can help prevent or control nutritional deficiencies, learning disabilities, hyperactivity, and emotional problems which may contribute to delinquent behavior.

Public health services should be comparable to privately provided medical care. *Accord*, National Advisory Committee on Criminal Justice Standards and Goals; *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.1 (1976). Standards 1.124 and 1.133 recommend that the necessary federal and state funding be forthcoming to develop these services. Oversight at the local, state, and federal levels is provided by Standards 1.114, 1.125, and 1.134.

Staffing requirements are similar to those for diagnostic centers. *See* Focal Point Individual, Strategy, Cor. H-1 and Commentary. The community should be involved in the organization and staffing of services and sensitive competent personnel is essential. *Id.*

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. H-1	Diagnostic Services
Cor. H-3	Treatment Services

Focal Point:
The Individual
Type of Prevention:
Corrective
Area of Emphasis:
Health/Mental Health
Strategy: Cor. H-3
Treatment Services

Provision of comprehensive physical and mental health treatment services available to children and families at all stages of child development.

Commentary

Once an initial diagnostic evaluation is made or after a juvenile takes advantage of preventive and maintenance service, the need for treatment may be indicated. The treatment services advocated by this strategy are the final component of a good health program. Working together, the combination of diagnostic, preventive, maintenance, and treatment services offers a comprehensive attack on health conditions that may be related to delinquent or criminal activity.

Treatment services include individual and family counseling, crisis intervention, and drug abuse services and emergency and long-term medical treatment for juveniles as well as their families. *See* Focal Point Individual, Strategy, Cor. F-1, Cor. F-2, Cor. F-3. *See also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 3.1, 3.2, 3.3, and 3.4 (1976) [hereinafter cited as *Report of the Task Force*].

Comprehensive health services must include both physical and mental health treatment services. These services are important during all stages of child development because, as stated by *The Report of the Task Force, supra* at Standard 3.1, ". . . poor health is one of the factors that must be considered in assessing the causes of delinquent behavior . . . Failure to obtain needed medical care can be extremely detrimental to a child's development." Poor health can lead to a juvenile's poor school performance or to a desire to drop out of school. This in turn may make the commission of delinquent activity more likely. Keeping a child in good physical health may help to obviate this result. Mental health counseling may help the juvenile cope with personal stress, family problems such as alcohol and drug abuse, or the emotional problems resulting from adolesence. In addition to long-term therapy for juveniles and their families, short-term counseling services, hot lines, drop-in centers, and community centers should be available.

The staffing and funding recommendations would parallel those discussed in Focal Point Individual, Strategy, H-1 and H-2.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. H-1	Diagnostic Services
Cor. H-2	Preventive and Maintenance Services
Cor. F-1	Individual and Family Counseling
Cor. F-2	Parent Training
Cor. F-3	Protective Services

Focal Point:
The Individual
Type of Prevention:
Corrective
Area of Emphasis:
Education
Strategy: Cor. Ed-1
Learning Disabilities

Provision of diagnostics, treatment and educational services and assistance for obtaining such services to children with neurological impairments causing learning disability, as well as support of research to ascertain the relationship of learning disabilities to delinquency.

Commentary

The term "learning disabilities" covers a wide range of disorders exhibited by children who have a substantial deficiency in a particular aspect of academic achievement. These disorders, referred to as perceptual handicaps, brain injuries, minimal brain dysfunction, dyslexia, and developmental aphasia, may effect listening, thinking, talking, reading, uniting, spelling, and arithmetic. C.A. Murray *The Link Between Learning Disabilities and Juvenile Delinquency* (1977).

This strategy is based upon recent studies which have attempted to link or correlate the existence of learning disabilities with juvenile delinquency. *See, e.g., 29 Journal of Juvenile and Family Courts,* No. 1 (1978); K. V. Orger, *Learning Disabilities and Juvenile Delinquency,* (N.C.J.R.S. Accession Number 09900.00.00.046082) [hereinafter cited as *Learning Disabilities and Juvenile Delinquency*]. Although a recent study by the American Institute for Research found that the existence of a causal relationship between learning disabilities and delinquency has not been established, it did conclude that such a link is suggested. *See generally* Orger, *supra.* Even if a causal link is not clear, other evidence seems to suggest that learning disabled children engage in delinquent behavior more frequently than other children and that the incidence of learning disability in the delinquent population is considerably greater than in the general population. *See* P.K. Broder and J. Zimmerman, *Relationship Between Self-Reported Juvenile Delinquency and Learning Disabilities—A Preminary Look At The Data* (N.C.J.R.S. Accession Number 09900.00.046517); J.W. Podbox and J.H. Barnes, *Diagnosis of Specific Learning Disabilities Among a Juvenile Delinquent Population* (N.C.J.R.S. Accession Number 09900.00.045689).

Because of these studies, this strategy recommends that children be provided with diagnostic, treatment, and educational services, and that more research be conducted to determine the precise linkage between learning disability and delinquency. *Accord,* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.17 (1976).

There is a great need for schools to implement programs which can early identify the learning disabilities of children and develop adequate learning programs to educate them. Learning disabilities often cause poor performance in school. As a result, feelings of frustration grow. Since feelings of inadequacy often trigger anti-social behavior, special education programs for learning disabled children can contribute to the prevention of juvenile delinquency.

Law enforcement agencies and courts also have an important role to play with respect to these programs. Family court diagnostic units and state juvenile justice service programs can assist the learning disabled child through psychological evaluation, identification of home environment demands, and assessments of academic strengths and weaknesses. *See* W.C. Love, "Diagnostic Team Approach For Juvenile Delinquents With Learning Disabilities," 26 *Juvenile Justice* 1 (1975); *Denver-Project New Pride—Exemplary Project Validation Report* (N.C.J.R.S. Accession Number 09900.00.039639).

Admittedly, special education programs are very expensive.

Therefore, state and federal support including funding, technical resources, and planning assistance will be necessary to accomplish the goals of this strategy. *See* Standards 1.121-6 and 1.131-4. *See also* P.L. 94-142, codified at 20 U.S.C. 1401 *et. seq.* (Education for All Handicapped Children Act).

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.426	Educational Personnel
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. Ed-2	Problems in Learning
Cor. Ed-3	Supportive Services

Focal Point Social Institutions:

Cor. Ed-1	Comprehensive Programs of Learning
Cor. Ed-2	Alternative Education
Cor. Ed-3	The Home as a Learning Environment
Cor. Ed-4	Utilization of School Facilities
Cor. Ed-5	Career Education

Focal Point Social Interaction:

Cor. E-1	De-emphasis on Labeling

Focal Point: The Individual
Type of Prevention: Corrective
Area of Emphasis: Education
Strategy: Cor. Ed-2
Problems in Learning

Provision of assistance to children with problems in learning and for the acquisition of appropriate diagnostic treatment and educational services.

Commentary

Not all learning problems are caused by neurological disorders. While many difficulties can be classified as learning disabilities, *see* Focal Point Individuals, Cor. Ed-1, some are caused by undetected physical or emotional handicaps. Children who in the past have been labeled as lazy, inattentive, distractable, backward, slow, or aggressive may have had speech or hearing disorders, visual impairments, or emotional problems. The resulting poor performance and frustration often give impetus to delinquency. *Id.* Since early diagnosis and treatment may correct these problems, this strategy requires that these services be provided for juveniles who demonstrate the need for them.

The National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.16 and Commentary (1976) [hereinafter cited as *Report of the Task Force*] focuses on the importance of teachers in initiating actions to assist children with learning problems. It is the teacher who must differentiate between a child who has low learning potential and one who is not performing at his/her potential due to a learning problem. A teacher's response to a child experiencing such difficulties can either compound or alleviate feelings of failure. This reaction may be pivotal in determining whether a juvenile succumbs to his/her frustration. *Report of the Task Force, supra* at Standard 3.16 recommends that teachers be trained in the etiology of learning problems to enable them to identify candidates for diagnostic testing. Teachers can also participate in planning and implementing proper treatment programs. Diagnostic testing can be provided by a school district team of doctors, neurologists, and psychologists. With the help of health professionals, special education experts, counselors and social workers, and his/her family, a child can overcome a learning problem once it is identified.

Support for such diagnostic and treatment programs must come from state and federal government agencies since they require extensive planning, technical resources, and funding. *See* Standards 1.121-6 and 1.131-4. *See also* P.L. 94-142, codified at 20 U.S.C. 1401 *et. seq.* (Education for All Handicapped Children Act).

Related Standards

1.111-1.1144	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.426	Educational Personnel
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. Ed-1	Learning Disabilities
Cor. Ed-3	Supportive Services

Focal Point Social Institutions:

Cor. Ed-1	Comprehensive Programs of Learning

Cor. Ed-2	Alternative Education
Cor. Ed-3	The Home as a Learning Environment
Cor. Ed-4	Utilization of School Facilities
Cor. Ed-5	Career Education

Focal Point Social Interaction:

Cor. E-1	De-emphasis on Labeling

Focal Point:
The Individual
Type of Prevention:
Corrective
Area of Emphasis:
Education
Strategy: Cor. Ed-3
Supportive Services

Provision by the educational system of a continuum of supportive services to all children and their families with particular emphasis on troubled or troubling children.

Commentary

This strategy recommends that the educational system provide a wide range of assistance for juveniles to insure that they perform up to their potential. Supportive services have traditionally been taken to mean counseling. This strategy, however, contemplates a broader interpretation which includes educational and supportive social services. *Accord,* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.15 and Commentary (1976).

Supportive services should be available to juveniles in accordance with their particular needs. Any problems which effect school performance should be remedied rapidly since poor performance may play a role in juvenile delinquency. Although the focal point of this strategy is the delivery of supportive services for the individual juvenile, services should also be available for parents and the educational staff. These people also need resources in order to help the juvenile during the educational process.

Supportive services include testing and diagnostic services, academic planning, remedial programs, tutorial assistance, medical and dental screening, nutritional programs, consumer education, and counseling. Different types of counseling such as career, personal, health, legal, and welfare counseling may be necessary. *See* Focal Point Individual, Strategy, Cor. F-1, Cor. H-1, Cor. H-2, Cor. H-3, Cor. Ed-1, Cor. Ed-2; Focal Point Social Institutions, Strategy, Cor. F-1, Cor. F-3, Cor. Ed-1-Ed-5, Cor. Ho.1.

Counseling services can effectively fulfill a juvenile's need for someone who listens, responds, and cares. Counselors can be liaisons between the student and school staff if they develop a trusting relationship with juveniles. They also provide helpful information to the educational staff. The National Advisory Committee on Criminal Justice Standards and Goals, *Community Crime Prevention,* Recommendation 6.6 and Commentary (1973) [hereinafter cited as *Community Crime Prevention*] suggests that counselors and other educational personnel design alternative programs for disadvantaged students, contact outside agencies, assist in diagnosis and treatment of student needs, and coordinate tutorial assistance programs, parent involvement strategies, peer group contacts, and specialty services. They can also be instrumental in securing other supportive services recommended by this strategy. They can direct research, conduct studies of experimental learning conditions, and inform school officials and other professionals of successful and unsuccessful programs. Finally, they can use and help train parents, peers, and neighbors as paraprofessionals to extend the range of services. *Id.*

As with any of the services recommended by the National Advisory Committee, local efforts in this area need support by state and federal agencies including planning assistance, technical resources, and funding. *See* Standards 1.121-6, and 1.131-4. *See also* P.L. 94-142, codified at 20 U.S.C. 1401 *et. seq.* (Education for all Handicapped Children Act).

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System

1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.426	Educational Personnel
1.427	Planning Personnel
1.428	Personnel Providing Support Services in Residential Programs
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. F-1	Individual and Family Counseling
Cor. H-1	Diagnostic Services
Cor. H-2	Preventive and Maintenance Services
Cor. H-3	Treatment Services
Cor. Ed-1	Learning Disabilities
Cor. Ed-2	Problems in Learning

Focal Point Social Institutions:

Cor. Ed-1	Comprehensive Programs of Learning
Cor. Ed-2	Alternative Education
Cor. Ed-3	The Home as a Learning Environment
Cor. Ed-4	Utilization of School Facilities
Cor. Ed-5	Career Education
Cor. F-1	Provision for Basic Needs
Cor. F-2	Day Care
Cor. Ho-1	Provision of Adequate Shelter

Focal Point Social Interaction:

Cor. E-1	De-emphasis of Labeling

Focal Point:
The Individual
Type of Prevention:
Corrective
Area of Emphasis:
Employment
Strategy: Cor. Em-1
Preparative and Supportive Counseling

Provision of assistance to youth in overcoming personal problems in relation to obtaining and maintaining employment.

Commentary

Many researchers have cited unemployment and underemployment of youth as a major factor contributing to crime and delinquency. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.22 (1976). The inability to find work often results in feelings of inadequacy and hostility toward the society and its law. While part of the problem may rest in the unavailability of employment opportunities for youth, *see* Focal Point Social Institutions, Strategy, Cor. Em-1, this strategy suggests that the personal problems of a youth may also be a hinderance to obtaining and maintaining employment. Supportive counseling services can effectively deal with this problem, thereby enabling a juvenile to obtain and maintain employment and enhance his/her self-image and respect for others.

Typically, an absence of skills possessed by an individual entering the job market permits only a limited number of employment opportunities. With regard to the youth who may have dropped out of school, holds a police record or is a victim of age, race or sex discrimination, the problem is intensified. Counseling centers conveniently located in neighborhoods accessible to youths can provide the specialized information and advice needed when seeking employment. Such counseling activities should include practical methods of seeking employment; how to present oneself at a job interview; the proper way to fill out an application for employment; methods of obtaining specialized, inexpensive training; and information on the availability of day care centers for young mothers.

Moreover, job banks such as those suggested by Focal Point Social Institutions, Strategy, Cor. Em-2 and employment counseling at the high school level are both important measures which a community can take to enhance counseling services. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Delinquency and Prevention*, Standard 3.24 (1976).

Counseling services should be well staffed. Counselors should be sensitive to the difficulties that young people face in obtaining employment as well as to the personal obstacles juveniles must overcome. *See* Standards 1.41, 1.425, and Commentaries.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Social Institutions:
Cor. Em-1 Expansion of Employment Opportunities
Cor. Em-2 Community Job Placement Information
Cor. Em-3 Age and Wage Restrictions

Focal Point:
The Individual
Type of Prevention:
Corrective
Area of Emphasis:
Recreation
Strategy: Cor. Rc-1
Expansion of Recreational Opportunities

Provision for the expansion and development of specialized recreational services which emphasize individual youth skills and provide effective mechanisms for the identification and appropriate referral for services of troubled youth.

Commentary

The importance of community involvement in providing recreational opportunities is stressed in Focal Point Social Institutions, Strategy, Cor. Rc-1. The focus of this strategy is somewhat different. Its emphasis is on the type of recreational services which should be provided for juveniles. Since recreational activities attract juveniles and provide for contacts with them, it is fruitful for the activities to develop individual skills in a constructive way. Recreational activities can also provide staff with a good setting in which to identify any problems that a juvenile may have and refer him/her to proper services.

A strong self-image is a necessary prerequisite to avoiding delinquent behavior. *See* Westinghouse National Issues Center, *Delinquency Prevention: Theories and Strategies* (draft, April 1979). Recreational activities should develop a juvenile's skills in ways which will enhance his/her self-image and assist in the prevention of juvenile delinquency. For example, athletics may provide a basic format through which learning skills and positive attitudes toward education itself can be developed. Using sports-related group discussions and curricula and community leardership, juveniles can find some measure of importance and contribution. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Community Crime Prevention*, Rec. 7-1 and Commentary (1973). Adventure activities such as hikes, nature study trips, and camping teach juveniles self help and leardership skills. Other skills which can be taught in the content of recreational programs are crafts, photography, carpentry, secretarial, business, accounting, and technical skills. As summarized by the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.36 and Commentary (1976) [hereinafter cited as *Report of the Task Force*], recreational activity should help "the individual develop realistic aspirations, relevant skills, and a belief that he/she has a personal stake in society. Recreational programs that recognize the individuality of youths can help provide the disadvantaged youth with a feeling of personal worth." To attain this goal, recrational planning must be responsive to cultural programs and staff must be specially trained and active in other aspects of the community. *See* Focal Point Individual, Strategy, Cor. Rc-1. *See also Report of the Task Force, supra* at Standards 3.34-3.38.

Once a juvenile becomes involved in recreational activities, staff members should be able to identify a juvenile's problems and refer him/her to appropriate services. Early identification is important to prevent a problem from worsening. Recreational staff may also be able to identify neglected children and refer the family for counseling, protective servies, and other assistance. *See* Focal Point Individual, Strategy, Cor. F-1, F-2, and F-3; Focal Point Social Institutions, Strategy, Cor. F-1, F-2, and F-3 and Cor. Ho-1.

This strategy contemplates that recreational staff have a great familiarity with local religious groups and other private service organizations who offer community services so that referrals to the proper services are rapid and effective. *See Report of the Task Force, supra* at Standard 3.38.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. F-1	Individual and Family Counseling
Cor. F-2	Parent Training
Cor. F-3	Protective Services
Cor. R-1	Counseling (Religious)

Focal Point Social Institutions:

Cor. F-1	Provision for Basic Needs
Cor. F-2	Day Care
Cor. F-3	Crisis Intervention
Cor. Rc-1	Expansion of Recreational Opportunities
Cor. Ho-1	Provision of Adequate Shelter
Cor. J-1	Preventive Patrols

Focal Point: The Individual

Type of Prevention: Corrective

Area of Emphasis: Religion

Strategy: Cor. R-1 Counseling

Provision by religious organizations of expanded specialized counseling service to children and families to foster family stability and social adjustment.

Commentary

Traditionally, religious organizations have provided many services to families and individuals through their sponsorship of community programs. This strategy recognizes this function of religious groups and the probability that such a role will continue. The strategy recommends that religious organizations continue to provide and expand specialized counseling services to children and families on a nonsectarian basis. By focusing on individual problems and community disintegration which can contribute to delinquent behavior, church groups can foster family stability, social adjustment, and community solidarity. Religious leaders are able to instill feelings of social responsibility and self-respect in some juveniles. Since a working relationship and rapport may already exist between those juveniles and religious leaders, counseling and community organization may be very effective.

The National Advisory Committee recognized that many people feel more confortable seeking help from religious leaders rather than from lay counselors or psychiatrists. When coupled with the historical role that religious organizations have played in providing such counseling, there is a strong basis for urging the expansion of services. However, in order for religious organizations to effectively assist in the prevention effort, religious leaders may need to educate themselves and their congregations about juvenile delinquency and behavioral problems.

The National Advisory Committee on Criminal Justice Standards and Goals recommended the following programs and services which religious organizations were specially suited to undertake:

(1) Counseling in the areas of mental and physical health, education, employment, and housing;
(2) Training volunteers in social service and counseling;
(3) Creating a human services referral network; and
(4) Organizing juvenile diversion and rehabilitative programs and Big Brother programs. National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.42 (1976).

The one caveat to participation by religious organizations in delinquency prevention is suggested by Standard 4.45. Although that standard addresses the juvenile's right to religious freedom while residing in a residential facility, it also has relevance here. Where religious organizations create programs which impact on delinquency prevention, they should be geared to a cross section of the community. People should not be excluded from programs because they belong to other or no religions. Similarly, while sectarian religious instruction may be part of the program, it should not be a mandatory requirement for participation. This maximizes the benefits of counseling and other program offerings while respecting people's personal beliefs. The benefits of ecumenism have already been recognized by many church leaders. The betterment of the community is one activity where it can be successfully implemented.

Related Standards

1.425	Personnel Providing Direct Services to Juveniles
4.45	Religious Freedom

Related Strategies

Focal Point Individuals:

Cor. F-1	Individual and Family Counseling

Cor. Em-1 Preparative and Supportive Counseling
Cor. Rc-1 Expansion of Recreational Opportunities
Focal Point Social Institutions:

Cor. F-1 Provision for Basic Needs
Cor. Em-2 Community Job Placement Information

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Family
Strategy: Cor. F-1 Provision for Basic Needs

Availability of assistance to children and families to assure the provision of the basic shelter, food, clothing, and social needs.

Commentary

Providing for the basic needs of every family is a fundamental goal of every society. When parents are unable to accommodate the needs of their families, all members may experience feelings of frustration and anxiety. Such unsettling conditions within the family can foster delinquent behavior in children. *See generally* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.7 (1976) [hereinafter cited as *Report of the Task Force*]. Enhancing the opportunity to meet survival needs is critical for the physical well-being of the family. It can also increase a parent's feeling of adequacy thereby freeing him/her to attend to a child's emotional needs. *Report of the Task Force, supra* at Standard 3.7.

While various income maintenance programs exist, information regarding the types of services available to families is often poorly disseminated. This results in an ill-informed citizenry and a costly, under-utilized public service program. The responsibility rests with state and local government agencies to provide this information. *See* Standards 1.111-1.114, and 1.121-1.125; *see also Report of the Task Force, supra* at Standard 3.7. In addition, local communities should work to inform the public of available health care, housing, and employment information while simultaneously eliminating the stigma which often surrounds the utilization of such services. Public service messages carried by radio and television can also greatly assist in this effort.

The condition of family divisiveness brought on by the inability to meet basic needs can be effectively neutralized if citizens and community agencies work together to bring about this change and provide its citizens with the services needed to fulfill this fundamental right of all people. Such a comprehensive program, however, will cost millions of dollars. States cannot possibly meet this burden alone. Federal government policies regarding basic assistance to families must be re-examined and redeveloped so that all citizens enjoy this birthright.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. F-1	Individual and Family Counseling
Cor. F-2	Parent Training
Cor. F-3	Protective Services

Focal Point Social Institution:

Cor. F-2	Day Care
Cor. F-3	Crisis Intervention

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Family
Strategy: Cor. F-2
Day Care

Provision of adequate community day care and drop-in child care services for children of all ages.

Commentary

A child's involvement in delinquency has often been traced to parental neglect and lack of supervision. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.8 [hereinafter cited as *Report of the Task Force*]. However, the provision of adequate parental care and supervision of children often conflicts with the necessity to seek work. Adequate day care centers can obviate this dilemma.

A child's visit to a day care facility can be an enjoyable learning experience when activities are structured in a proper fashion. School will remain the most important social institution affecting a child's life. Day care facilities, however, can be a child's first positive introduction to social interaction and self-awareness.

Sponsorship can vary, utilizing both public and private organizations to serve preschool children. Day care programs can direct children's activities around self-image enrichment and peer cooperation, cross-cultural appreciation and health. Further, day care programs can provide nutritionally balanced meals during the day, a variety of ethnic material from which children can begin to develop cultural awareness, and field trips to supplement the centers' activities and expand the children's knowledge.

In order to foster a child's well-being and "achieve the overall goal of promoting healthy and harmonious families," *Report of the Task Force, supra* at Standard 3.8, day care centers should maintain close coordination between their programs and existing health, education, and welfare services. Thus, other recommendations suggested by these strategies are also implemented. *See* Focal Point Social Institutions, Strategy, Cor. F-1, Cor. Ed-2, Cor. Rc-1; Focal Point Individual, Strategy, Cor. Ed-2 and Cor. H-1.

Drop-in day care services can also provide child care on an occasional or emergency basis. Such services should be located in an area easily accessible to parents. Facilities could be located in schools for those parents wishing to continue their education and near places of employment for those parents who work. Neighborhood homes can join together to develop their own day care programs. Their staff support can come from various other centers which employ day care counselors and aides. Parents who assist in the program can obtain day care at reduced or no cost or obtain vocational training credit to become a counselor or aide.

Day care programs are one way of alleviating the problem of stress within a family. With its utilization, there may be less of a financial strain on the family and absenteeism at work can decrease. Children will receive an enhanced opportunity to interact and grow with new and different children, learn to cooperate with others, and be properly cared for while parents are working.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles

1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. F-1	Individual and Family Counseling
Cor. F-2	Parent Training
Cor. F-3	Protective Services
Cor. Ed-2	Problems in Learning
Cor. H-1	Diagnostic Services
Cor. R-1	Counseling (Religious)

Focal Point Social Institution:

Cor. F-1	Provision for Basic Needs
Cor. F-3	Crisis Intervention
Cor. Ed-2	Alternative Education

Focal Point:
Social Institutions
Type of Prevention:
Corrective
Area of Emphasis:
Family
Strategy: Cor. F-3
Crisis Intervention

Provision of 24-hour crisis intervention services to assist children and their families.

Commentary

As indicated in Focal Point Individual, Strategy, Cor. F-3, the 24-hour crisis intervention service advocated by the National Advisory Committee is an important element in a program geared toward providing comprehensive protective services to a community. One of the primary functions of crisis intervention is to provide shelter care and guidance to abandoned children or to families who have lost their place of residence. Typically, crisis intervention is required when young children are left unattended for an extended period of time, when the conduct of parents is temporarily detrimental to a child, when parents die suddenly, become ill, or are taken into custody leaving no one to care for their children.

Crisis intervention often provides the final attempt to maintain family integrity before intervention by the family court. The objective of the 24-hour service is to preserve the family unit whenever feasible and to provide trained emergency caretakers to assist families in times of need.

Supported by the American Humane Association, crisis intervention has proven to be a valuable asset to many communities across the country and has been recognized as such in a comparative study of protective service systems sponsored by the Department of Health, Education and Welfare. *See Two Community Protective Service Systems Operations* (N.C.J.R.S. Accession Number 09900.00.046703).

Since links between crises and anti-social acts have been noted, and since family integrity is conducive to a law-abiding society, 24-hour crisis intervention programs can have some effect in detering delinquent behavior.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.125	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.427	Planning Personnel
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:
Cor. F-1 Individual and Family Counseling
Cor. F-2 Parent Training
Cor. F-3 Protective Services
Focal Point Social Institution:
Cor. F-2 Day Care
Cor. F-3 Crisis Intervention

Focal Point:
Social Institutions
Type of Prevention:
Corrective
Area of Emphasis:
Education
Strategy: Cor. Ed-1
Comprehensive Programs of Learning

Provision by the educational system of assistance to students and their families in establishing and achieving agreed-upon objectives of academic proficiency at each level of educational development.

Commentary

Education is the focus of many of the preventive strategies because of the profound effect the school as a social institution has on the behavior of juveniles. *See generally* Westinghouse National Issues Center, *Delinquency Prevention: Theories and Strategies* (draft, April 1979). An emphasis on the educational system in juvenile delinquency prevention can accomplish two goals. First, preventive strategies can address the structure of school programs which are believed to cause or lead to delinquent or criminal activity. *Id.* Second, affirmative action can be taken to teach the juvenile positive skills which will encourage law-abiding behavior.

This strategy recommends the participation by juveniles and their families in establishing the objectives of the juveniles' academic performance. The coordinated effort of students, the students' families, and educational personnel to develop learning objectives for each level of educational development is essential to create valid learning programs. *Accord,* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention.,* Standard 3.10 [hereinafter cited as *Report of the Task Force*]. The strategy places the major responsibility for this comprehensive system on educational personnel who must initiate efforts to obtain a consensus regarding the objectives of academic proficiency at each level of educational development. The *Report of the Task Force, supra* at Standard 3.10 and Commentary, recommends that community groups and leaders should be included in developing objectives.

Once these goals have been established, the best methods for attaining them must be determined. Traditional methods of instruction are not effective for all students. In order to develop alternate methods of teaching these children, an evaluation of that child's learning ability must occur. It can pinpoint learning problems, suggest proper remedial programs and supportive services, and alert parents to the existence of these learning barriers. *See* Focal Point Social Institutions, Strategy, Cor. Ed-3.

The National Advisory Committee on Criminal Justice Standards and Goals summarized the role of the school system in guaranteeing a basic education in an individualized manner:

> ". . . schools should establish systems of sequentially organized learning experiences that permit the monitoring of student programs and provide whatever help is necessary to meet learning objectives on an individual basis."

Report of the Task Force, supra at Standard 3.10 and Commentary. This strategy is a broad one which will include a recognition of alternative career education as options for nontraditional learning. It also recognizes the home as a resource for learning. The strategies outlined in Focal Point Social Institutions, Strategy, Cor. Ed. 2, 3, 4, and 5 will be helpful in implementing this comprehensive learning program.

Of course, no effort as ambitious as this is possible without an active role by the state and federal governments in providing technical, financial, and programmatic resources. *See* Standards 1.121-1.126, and 1.131-1.134. *See also* P.L. 94-142, codified at 20 U.S.C. 1401 *et. seq.* (Education for all Handicapped Children Act).

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.41	Personnel Selection
1.426	Educational Personnel

Related Strategies

Focal Point Individual:

Cor. Ed-1	Learning Disabilities
Cor. Ed-2	Problems in Learning
Cor. Ed-3	Supportive Services

Focal Point Social Institutions:

Cor. Ed-2	Alternative Education
Cor. Ed-3	The Home as a Learning Environment
Cor. Ed-4	Utilization of School Facilities
Cor. Ed-5	Career Education

Focal Point Social Interaction:

Cor. E-1	De-emphasis on Labeling

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Education
Strategy: Cor. Ed-2
Alternative Education

Provision by the educational system of alternative educational experiences which encourage experimentation and diversity in curriculum, instructional methods and administrative organization of the learning process.

Commentary

Because not all juveniles can benefit from a traditional school environment and educational process, this strategy recommends the development of alternative educational experiences. This will require diversity and flexibility in the school's curriculum, instructional methods and administrative organization. *See generally* Westinghouse National Issues Center, *Delinquency Prevention: Theories and Strategies* (draft, April 1979).

The formal learning process often functionally excludes many juveniles who need alternative ways to learn. If a particular student is not succeeding within the traditional learning environment of a school, alternative educational programs should be used to address that student's needs. Some of the juveniles who may be well-suited for alternative educational programs include those who are school dropouts, juvenile delinquents, and chronic truants; those considered incorrigible or uneducable; and juveniles with emotional problems and physical handicaps. Alternative educational programs may also be valuable for young adults who have finished their high school educations but who need remedial academic or vocational training to function in society. In their role of preventing juvenile delinquency, alternative educational programs can assist children in the community who have not experienced delinquency problems as well as those who have been adjudicated as delinquent and are ready for reintegration into society.

Other nontraditional alternatives to education such as career education and using the home as a learning environment, can be incorporated into experimental and alternative educational programs. Alternative programs may include multi-cultural awareness, bilingual education, and community service. One innovative teaching method is the "family unit" concept where teachers remain with students as they progress through grade levels. Other interesting techniques to implement alternative education are described in National Advisory Committee on Criminal Justice Standards and Goals, *Community Crime Prevention* (1973):

1) Large houses purchased by state governments could be outfitted as learning centers. They could have restricted student enrollments and be staffed with Master teachers. Parents and children could attend together in an extanded family setting.
2) State contracts could be granted to good private schools to take a percentage of disadvantaged pupils on a performance guaranteed basis, with performance criteria to emphasize social skills.
3) Special classes with skilled teachers could be conducted on a 4:1 or 5:1 student contact basis.
4) Young students could be apprenticed to artisans who would direct them in projects of interest such as photography, glass staining, wood carving, race car construction, painting, sculpture, etc.
5) Block schools, run by trained parents and teams of learning experts, could be set up in properly equipped homes in each block to conduct "mini-schools" with very restricted numbers of students.

An alternative educational program in Atlanta, Georgia, called the Atlanta Street Academy, provides educational opportunities to juvenile offenders and others in the community. The emphasis is on having a certain percentage of the juveniles pass a high school equivalency test. Atlanta Street Academy, *Final Evaluation Report* (N.C.J.R.S. Accession Number 09900.00.036537). Independent High is a private school for unemployed youths in Newark, New Jersey. These juveniles are either school dropouts or pushouts. The school offers courses such as math, English, social studies, street law, job interview skills, archeology, and music. The school year is divided into equal periods of outside work and in-school instruction. This program is highly successful in part because of its small size, the informality of its classes, and the students' participation in decision making and the availability of its staff. "Independence High—A School for Delinquents," *Correction Magazine*, Vol. 3, (Dec. 1977) (N.C.J.R.S. Accession Number 09900.050762).

It is important that alternative education be available to all students. Participants should not be stigmatized and participation must be optional. Alternative education, like any nontraditional learning program which is new to a school system, will need community support and funding to get started. Federal and state agency support in the form of funding and resources will also be necessary. *See* Standards 1.121-126, 1.131-134, and Commentaries.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.41	Personnel Selection
1.426	Educational Personnel

Related Strategies

Focal Point Individual:

Cor. Ed-1	Learning Disabilities
Cor. Ed-2	Problems in Learning
Cor. Ed-3	Supportive Services

Focal Point Social Institutions:

Cor. Ed-1	Comprehensive Programs of Learning
Cor. Ed-3	The Home as a Learning Environment
Cor. Ed-4	Utilization of School Facilities
Cor. Ed-5	Career Education

Focal Point Social Interaction:

Cor. E-1	De-emphasis on Labeling

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Education
Strategy: Cor. Ed-3
The Home as a Learning Environment

Development by the educational system in cooperation with other community agencies of methods and techniques for enriching the potential of the home as a learning environment.

Commentary

Since juveniles do not spend all of their hours or years in school and since not all juveniles benefit from the traditional learning experience that schools most often provide, the home can become an important learning resource. This strategy recommends that the educational system and community agencies develop methods and techniques for using the home in the learning process. This strategy recognized that by the time the child begins school, he/she has already been vastly influenced by his/her homelife. Many patterns of behavior have been set. It is during the early years that children must be exposed to positive role models and be treated in a way which will provide them with a good self-image. Encouraging the kind of homelife which will give the child a healthy environment in which to develop intellectually, emotionally, and physically is the goal of this strategy. This is an essential preventive measure against delinquency.

Implicit in this strategy is a recognition of the importance of a parent's participation in the learning process. Since learning patterns develop early, even before schooling begins, involving parents in the education of their children is essential. Using parents and the home as part of the learning process can effectuate early identification of any learning or behavioral problems. Continued learning in the home after the child commences school is important because some children will find the rigor and routine of a regular school program too demanding.

The Commentary to Standard 3.13 of the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention* (1976) [hereinafter cited as *Report of the Task Force*], also stressed the importance and advantages of a family role in education. The use of the home as a learning environment also may foster positive relationships between parents and children and between parents and school personnel. Parents will become more aware of their important and continuing role in the education of their children. *Id.* Positive role models are developed to help shape a child's self-image and enrich his/her experience. The stimulation and challenge that parents provide are part of an ongoing learning process.

This strategy places reliance on the educational system and community agencies for inducing parental involvement. One way of interesting parents in the education of their children in the home is to involve them in the educational process in the schools. *Report of the Task Force, supra* at Standard 3.13 recommends:

1) Utilizing parents as paraprofessionals;
2) Involving parents in the academic planning process;
3) Developing curricula for home learning and distributing materials for home use;
4) Coordinating efforts by parents and teachers to develop new teaching methods; and
5) Team teaching by parents and teachers and providing special courses to prepare parents.

A unique program called the Homework House Project was developed in Berkeley, California, to involve parents and the home in the learning process. This program was sponsored by the Office of Human Relations. It utilized a wide range of community resources including parents, organizations, neighbors, teachers, school administrative staff, and Bay area resource personnel. Forty-eight homes were available as "homework houses" twice a week for one and a half hours each evening. The project was operated and staffed by previously unemployed or underemployed residents of Berkeley. Its major goals were to improve the attitudes of students towards education and to provide tutoring in reading and math. *See* National Advisory Committee on Criminal Justice Standard and Goals, *Community Crime Prevention* (1973).

It is obvious that an enthusiastic local effort is necessary for implementing this strategy. State and federal resources would be necessary to solicit community support and mobilize resources to attain its goals. *See* Standards 1.121-1.126, 1.131-1.134, and Commentary.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.41	Personnel Selection
1.426	Educational Personnel

Related Strategies

Focal Point Individual:

Cor. Ed-1	Learning Disabilities
Cor. Ed-2	Problems in Learning
Cor. Ed-3	Supportive Services

Focal Point Social Institutions:

Cor. Ed-1	Comprehensive Programs of Learning
Cor. Ed-2	Alternative Education
Cor. Ed-4	Utilization of School Facilities
Cor. Ed-5	Career Education

Focal Point Social Interaction

Cor. E-1	De-emphasis on Labeling

Focal Point:
Social Institutions
Type of Prevention:
Corrective
Area of Emphasis:
Education
Strategy: Cor. Ed-4
Utilization of School Facilities

Utilization of school facilities and resources by the local community during nonschool hours.

Commentary

This strategy recommends that school facilities should be fully utilized during nonschool hours as a community resource. The advantages of this approach are many. The utilization of school facilities for the whole community and not just for academic education involves the school in the problems of the community. Academic, vocational, cultural, recreational, and health services for children and adults can be provided. Access to schools for these services will give area residents the feeling that the school is an integral part of the community, thereby fostering citizen involvement and providing a more enriching environment for the juvenile. Since it is possible that the lack of community involvement may be relevant to a juvenile's feelings of alienation and to his/her ensuing juvenile delinquency, transforming the school into a community center may help to alleviate the problem.

Wherever possible, schools should operate on a twelve-month, seven-day-a-week basis. Community organizations could supervise school facilities and oversee school activities and services after school hours. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.19 (1976) [hereinafter cited as *Report of the Task Force*]. School libraries and cafeterias can be made accessible to the community. Child care and services for the elderly can be provided in school buildings. High school equivalency classes can be offered as well as continuing education programs. Teacher training for parents mentioned in Focal Point Social Institutions, Strategy, Cor. Ed-3 can be offered, as well as classes in parenting and in child growth and development. *See* Focal Point Individual, Strategy, Cor. F-2. The use of school facilities is a way to implement career and alternative education programs for the juvenile. Finally, the community can use the school for meeting places, health diagnostic services, artistic productions, and sports events.

An example of a program which utilizes school facilities is Community Concern 13 based in Philadelphia where school facilities are kept open on Saturdays. Community volunteered juveniles operate a full recreational program. The program organizes classes in black history, culture, handicrafts, and basic literacy skills. *Report of the Task Force, supra* at Standard 3.19 and Commentary.

The utilization of school facilities for after school programs will need community support and participation. It will also need state and federal funding and guidance for implementation and operation. Standards 1.121-1.126, and 1.131-1.134 outline this kind of assistance.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.41	Personnel Selection
1.426	Educational Personnel

Cor. Ed-1 Learning Disabilities
Cor. Ed-2 Problems in Learning
Cor. Ed-3 Supportive Services
Focal Point Social Institutions:
Cor. Ed-1 Comprehensive Programs of Learning
Cor. Ed-2 Alternative Education
Cor. Ed-3 The Home as a Learning Environment
Cor. Ed-5 Career Education
Cor. Rc-1 Expansion of Recreational Opportunities
Focal Point Social Interaction:
Cor. E-1 De-emphasis on Labeling

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Education
Strategy: Cor. Ed-5 Career Education

Provision by the educational system in conjunction with other appropriate community resources of career experiences in specific areas of employment.

Commentary

If schools are to effectively assist in the prevention of juvenile delinquency, they must provide education which can be useful in selecting a career. This strategy recognizes the advantages of an educational system which provides juveniles with career experiences. Relating education to employment makes learning more than an intellectual exercise. It prepares a juvenile for entrance into the world of adults. Career education generally includes teaching job skills, offering placement services, and on-the-job-training.

Unemployment has been identified as a condition which may cause or lead to juvenile delinquency. If juveniles are taught job skills and find satisfying employment, there is more incentive to function in the society in a law-abiding manner. Exposure to different career alternatives and work-study arrangements provide stimulation and challenge, positive role models, and a rewarding, enriched educational experience. Education directed toward a satisfying career gives juveniles a positive self-image. As an extra benefit, their academic skills such as reading, writing, and mathematics may improve since these will be seen as necessary to succeed at most jobs.

Career education can be implemented in any number of ways. Work-study programs, field placements, and on-the-job-training involve the school and employers in the community. This approach allows the juvenile to supplement his/her family's income and to benefit from positive relationships with outsiders. Invitations to people in different occupations to speak in the classroom provide juveniles with exposure to the working world and give children guidance in determining their future. Vocational schools as well as traditional academic programs are both necessary for the success of this endeavor.

Several school systems now provide these services. A career education program exists in the Seattle, Washington, Public School System and a career education mobile unit services rural school districts in Maryland. The Cleveland Impact Cities Program has as its target group school dropouts between the ages of sixteen and twenty-one, 36 percent of whom have prior arrest records. The program uses alternative educational methods to provide the juveniles with qualifications for employment. One of the project's goals was to minimize the desire of the juveniles to commit crimes. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.21 and Commentary (1976).

Career education encompasses an awareness and exploration of different careers, the preparation for these careers, and placement services to effectuate the career educational process. The broad-based nature of this system will require changes in the educational system. The implementation and expansion of career education will require federal and state funding. Statutory changes may also be necessary since innovative programs will not always require daily school attendance. Planning, decision making, technical and programmatic resources will be needed for these local efforts and will have to be supplied by federal and state government agencies. *See* Standards 1.121-1.126, and 1.131-1.134.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System

1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.41	Personnel Selection
1.426	Educational Personnel

Related Strategies

Focal Point Individual:

Cor. Ed-1	Learning Disabilities
Cor. Ed-2	Problems in Learning
Cor. Ed-3	Supportive Services
Cor. Em-1	Preparative and Supportive Counseling

Focal Point Social Institutions:

Cor. Ed-1	Comprehensive Programs of Learning
Cor. Ed-2	Alternative Education
Cor. Ed-3	The Home as a Learning Environment
Cor. Ed-4	Utilization of School Facilities
Cor. Em-1	Expansion of Employment Opportunities
Cor. Em-2	Community Job Placement Information

Focal Point Social Interaction:

Cor. E-1	De-emphasis on Labeling

Focal Point:
Social Institutions
Type of Prevention:
Corrective
Area of Emphasis:
Employment
Strategy: Cor. Em-1
Expansion of Employment Opportunities

Implemention of a comprehensive employment program strategy through a cooperative effort by government and private enterprise to expand the number of available jobs.

Commentary

The implementation of a comprehensive employment program strategy is an important element in a delinquency prevention program. Unemployment and underemployment have often been cited as major factors contributing to juvenile delinquency. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.22 (1976) [hereinafter cited as *Report of the Task Force*]. Cooperative efforts by government and private enterprise in formulating and implementing a strategy to expand the number of jobs available for youth is critical to the success of prevention programs. Government and private enterprises must be cognizant of their respective capabilities in order to develop realistic job expansion strategies.

The National Advisory Committee for Criminal Justice Standards and Goals recommended that government encourage youth employment by creating public service jobs and by providing direct tax incentives to employers who create new job opportunities. This will encourage private enterprise to consider the employment needs of youth and induce them to work harder at providing employment opportunities.

There are many benefits to be derived from a strategy which emphasizes cooperative efforts. A comprehensive employment program strategy will provide information to both employers and juveniles regarding employment opportunities. Juveniles who know what skills employers are seeking will be able to seek training to develop them. In addition, misconceptions regarding potential young employees will be avoided through these combined efforts.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection

Related Strategies

Focal Point Individual:
Cor. Em-1 Preparative and Supportive Counseling
Focal Point Social Institutions:
Cor. Em-2 Community Job Placement Information
Cor. Em-3 Age and Wage Restrictions

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Employment
Strategy: Cor. Em-2
Community Job Placement Information

Provision of readily accessible job placement and information services to assist all youth in obtaining employment.

Commentary

The provision of readily accessible job placement information services to assist youth in obtaining employment is an important aspect in the prevention of juvenile delinquency. As noted by the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.22 and Commentary (1976) [hereinafter cited as *Report of the Task Force*], and other sociological studies, unemployment of youth is a major factor contributing to their delinquency.

Accessibility is a major factor in the effective functioning of employment service centers. Juveniles should be able to contact such centers with few obstacles. Centers should be located in areas having large numbers of young residents. *See Report of the Task Force, supra* at Standard 3.23 and Commentary. Familiarity with the location of job placement and information service centers will facilitate early contact with the center and its services.

The *Report of the Task Force, supra* at Standard 3.23 suggests two possible approaches with respect to job placement and service centers. One is to establish a specialized community center that focuses solely on youth and their unique employment problems. The other is to incorporate the services into a multi-service center. It is also possible for public, private, or religious organizations already established within a community to be modified in order to provide job placement and information services to youth. No specific type of center is endorsed by the National Advisory Committee since the particular characteristics of individual communities will determine the most practical approach.

Job placement and information centers should perform several important functions. Initially, the staff of such centers should conduct an outreach campaign to involve the community and gather local support for the center. The outreach campaign will facilitate identification of the employment needs of the community, improve the potential for coordinating services that will contribute to the success of the center, and open the lines of communication between potential employers and juveniles. *See generally Report of the Task Force, supra* at Standards 3.22-3.25 and Commentaries; W. T. Pink and D. E. Kapel, "Decentralization Reconsidered: School Crime Prevention Through Community Involvement," National Institute of Education, *School Crime and Disruption,* 115 (1978).

A job placement and information service center must perform other functions to insure its success. It can identify skills and counsel juveniles in terms of realistic employment expectations, keep records to assist in redefining employment goals, disseminate information to employers regarding prospective employees, and detail the availability of job training programs.

To insure reaching a wide range of juveniles, the job placement and information service center should utilize the media to disseminate information regarding the services that they provide. *See also* Focal Point Social Institutions, Strategy, In. M-1. In addition to radio and television announcements, local community leaders should be encouraged to speak at center functions and to enlist the support of the business community for activities of the center.

Summer employment programs are an especially crucial part of a juvenile delinquency prevention program. According to the *Report of the Task Force, supra* at Standard 3.25, "the inability of youths to find jobs often produces frustration and financial hardship, which in turn may lead to delinquent behavior." Unfortunately, finding employment opportunities for juveniles in the summer has traditionally been a difficult task. Ideally the center should designate full-time employees to identify, develop, and coordinate employment opportunities between employers and youth. Preparation, advertising and locating employment should begin well before the summer. *See Report of the Task Force, supra* at Standard 3.25 and Commentary. *See also* E. Wenk, "Tomorrow's Education: Models for Participation," National Institute of Education, *School Crime and Disruption,* 163 (1978). Since the number of juveniles seeking employment will usually exceed the number of jobs, it may be necessary to develop criteria whereby certain juveniles, based on "economic need, employment problems or career interest" would have priority in obtaining the available jobs. *See Report of the Task Force, supra* at Standard 3.25 and Commentary.

Educational institutions and job centers should cooperate and coordinate efforts to develop youth employment. The educational system can play an important role in preparing youth for summer employment. Contact, however, should also be continued throughout the year to provide a continuous flow of information relating to employment opportunities. *See also* Focal Point Social Institutions, Strategy, Cor. Ed-1, Ed-2, and Ed-5.

Counselors within the educational institutions should work with the job center staff to "maintain updated knowledge of current opportunities for youth, counsel youth with regard to resume preparation and interviewing techniques, create practical work experiences during the academic year, and inform the job center of particular problems a juvenile may be encountering and the cause of the problems." *See Report of the Task Force, supra* at Standards 3.23, 3.24 and Commentaries.

A crucial and additional responsibility that must be undertaken by the job placement and information center is that of an evaluation. Monitoring the progress of an individual youth can lead to the identification of and information about special problems or needs of the juvenile. Early identification of such problems may remedy minor difficulties which can lead to more serious consequences. *See Report of the Task Force, supra* at Standards 3.22-3.25 and Commentaries.

The job placement and information center can function as an effective juvenile delinquency preventive measure by showing juveniles that their unique characteristics and problems relating to employment are understood by the staff. If juveniles feel that they are being responded to in a meaningful way, they will be more likely to use the center and develop respect for the jobs they obtain. Further, when employment is obtained, the juvenile will have a greater stake in his/her community and thus be less prone to deviate from its mores.

The viability of these community job placement and information centers will depend on local, state, and federal support in terms of funding, planning assistance, and technical resources. *See Standards* 1.121-1.126, and 1.131-1.134.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection

Related Strategies

Focal Point Individual:	
Cor. Em-1	Preparative and Supportive Counseling
Focal Point Social Institutions:	
Cor. Em-1	Expansion of Employment Opportunities
Cor. Em-3	Age and Wage Restrictions
Focal Point Social Institutions:	
In. M-1	Media as a Method of Education
Cor. Ed-1	Comprehensive Program of Learning
Cor. Ed-2	Alternative Education
Cor. Ed-5	Career Education

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Employment
Strategy: Cor. Em–3
Age and Wage Restrictions

Review of legislation that affects youth employment to ascertain methods of expanding youth employment opportunities without exposing youth to substantial health and/or developmental risks.

Commentary

This strategy recommends that legislation which affects youth employment be reviewed and modified in order to expand those opportunities. This must be accomplished, however, in a way that insures that juveniles are not exposed to substantial health or developmental risks. Current child labor laws do not accurately reflect the realities of the labor market. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.28 and Commentary (1976) [hereinafter cited as *Report of the Task Force*]. Instead, these laws reflect a period in our culture when children were in need of protection from employers who subjected them to dehumanizing working conditions. Because of these laws, academic education became the primary occupation of youth and restrictions on child labor increased. Today most statutes restrict juveniles from meaningful employment until the age of sixteen *See Report of the Task Force, supra* at Standard 3.28 and Commentary; J. Hrusk in "The Obsolescence of Adolesence," in National Institute of Education, *School Crime and Disruption,* 47 (1978).

Age restricting legislation isolates juveniles from a major part of their world. Academic educational alternatives are not always well-suited to all youth. Where academic training is not an enhancing experience for juveniles, employment becomes an attractive option. Without this kind of meaningful alternative to school, juveniles may turn to delinquent behavior. *See Report of the Task Force, supra* at Standard 3.28 and Commentary. For the juvenile who is successful in school, the availability of both education and employment opportunities gives him/her two alternatives from which to gain experience and rewards.

Since prevention efforts have demonstrated that the benefits of youth employment are significant, this strategy recommends that steps be taken to expand employment opportunities through less restrictive age legislation. *See Report of the Task Force, supra* at Standard 3.28 and Commentary. Current legislation must be reviewed in order to discover what impact the easing of youth employment age limits would have on the economy, whether the educational process could be strengthened to provide realistic alternatives for juveniles not satisfied or rewarded by pure academics, and whether the barriers to community involvement can be broken via employment opportunities having other than a profit motive. *Id.* The answers to these questions will enable society to determine whether the current legislation is relevant to employment conditions and to juveniles today.

Current wage legislation may also deter employers from offering juveniles some type of employment. The advisability of reducing minimum wage requirements for youth must be reevaluated. Consideration should also be given to assisting private employers through wage supplements. *Accord, Report of the Task Force, supra* at Standard 3.28. Programs similar to the college work-study program could also be established at the high school level. These programs provide youth with the opportunity to gain the benefits of practical work experience and the opportunity to remain in school. Rather than limiting the juvenile to the alternatives of either work or school, vocational programs currently existing outside of the educational setting could be transferred to the high schools.

The government subsidies to the private sector are only a part of a major effort that must be undertaken by state and federal government agencies to assist these initiatives. *See* Standards 1.121-1.126, and 1.131-1.134. Community encouragement from business and labor is necessary if employment opportunities are to be expanded and crime deterred.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection

Related Strategies

Focal Point Individual:

Cor. Em-1	Preparative and Supportive Counseling

Focal Point Social Institutions:

Cor. Em-1	Expansion of Employment Opportunities
Cor. Em-2	Community Job Placement Information
Cor. Ed-1	Comprehensive Program of Learning
Cor. Ed-2	Alternative Education
Cor. Ed-5	Career Education

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Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Justice System
Strategy: Cor. J-1
Police-Youth Relations

Provision of programs by the law enforcement agencies in coordination with other community agencies which furnish opportunities for more contact between youth and police on an unofficial basis.

Commentary

This strategy recognizes that police officers have a social service role as well as a law enforcement role in society. The traditional role of the police officer in our society and the profound effect that the officer can have on a juvenile as an authority figure makes contact between the officers and juvenile an effective prevention strategy. However, these contacts should not occur for law enforcement purposes only. This strategy suggests that law enforcement agencies work with other community agencies to provide programs which will guarantee more contact between youth and police on an unofficial basis. Positive interaction with juveniles is essential if police officers are to establish a good relationship with juveniles and broaden their role to include a preventive component.

A police officer should be very familiar with social service agencies, organizations and youth service bureaus in the community. Police officers can make a valuable contribution to these agencies and organizations since they are in a unique position to evaluate community needs and identify community problems. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 6.2 and Commentary [hereinafter cited as *Report of the Task Force*].

Youth service bureaus and community agencies can offer juveniles a wide range of services including education, vocational training, physical and mental health treatment, and drug treatment. Police officers can provide leadership and initiative by becoming counselors and recreation supervisors. They will increase the available personnel for those organizations while solidifying preventive efforts. *See* Focal Point Individual, Strategy, Cor. Rc-1; and Focal Point Social Institutions, Strategy, Cor. Rc-1. *See also Report of the Task Force, supra* at Standard 6.3 and Commentary. Police officers can also speak at schools, clubs, and athletic events regarding laws which affect juveniles. Officers can organize community events, team activities, clean-up campaigns, or ride-along programs.

The combined effort by community and law enforcement agencies to furnish opportunities for more contact between youth and police on an unofficial basis is an important component of a juvenile delinquency prevention program. Police administrators should work with public and private agencies to ensure the availability of adequate services in various neighborhoods. This type of cooperation within the juvenile justice system can result in a more effective effort to prevent juvenile delinquency. *See also* Standards 2.251, 2.252, 2.253 and Commentaries.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.41	Personnel Selection
1.421	Law Enforcement Personnel
2.251-2.253	Police Juvenile Units

Related Strategies

Focal Point Individual:

Cor. Rc-1	Expansion of Recreational Opportunities
Focal Point Social Institutions:	
In. J-1	Preventive Patrols
In. J-2	School-based Deterrence
Mec. J-1	Citizen Efforts to Prevent Delinquency
Mec. J-2	Hand Gun Control

Cor. Rc-1	Expansion of Recreational Opportunities
Focal Point Social Interaction:	
Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct
Re. J-1	Statutory Changes and Reform

Focal Point:
Social Institutions
Type of Prevention:
Corrective
Area of Emphasis:
Recreation
Strategy: Cor. Rc-1
Expansion of Recreational Opportunities

Provision of recreational opportunities for all youth incorporating necessary service mechanisms and outreach programs to involve youth who might not otherwise participate.

Commentary

Recreational opportunities are an essential part of a juvenile delinquency prevention program because they initiate and maintain contact with youth and provide outlets where rewards can be gained. This strategy recognizes the importance of recreational opportunities and suggests that all necessary service mechanisms and outreach programs be incorporated into the program to involve those who might not otherwise participate. Once the juvenile is involved in leisure activities, a trusting relationship may develop between him/her and the recreational staff. This provides the juvenile with some outlet for discussing feelings and problems. At the same time, free hours can be filled with constructive leisure activities.

This strategy urges not only that recreational opportunities be generally available, but that steps be taken by the community to involve those who might otherwise not participate in them. *Accord*, National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.34 and Commentary (1976) [hereinafter cited as *Report of the Task Force*]. The members of the community must actively encourage juveniles to participate in recreational activities by donating facilities, advertising, and volunteering time and services.

Special activities and events, such as athletic competition, hikes, beach trips, and study programs should be provided. Special ethnic cultural awareness events can be used to draw juveniles to the program. Individual needs should always be considered in planning for recreational programs. For example, recreational programs which emphasize the development of individual skills such as fine arts, performing arts, crafts, cooking, photography, and carpentry should be encouraged. *Report of the Task Force, supra* at Standard 3.36 and Commentary. Developing artistic talents exposes children to new cultural opportunities and provides them with confidence and skills that assist in preventing delinquent acts. *See Report of the Task Force, supra* at Standard 3.37 and Commentary.

Another way of reaching and involving juveniles who might not otherwise participate, is to offer them a role in the planning, implementation, evaluation, and solicitation of funds for recreational programs. This creates a stake in the outcome of the activity and helps to diminish feelings of inferiority. *See generally* National Advisory Committee on Criminal Justice Standards and Goals, *Community Crime Prevention*, 154 (1973).

Since recreational staff may provide excellent role models for juveniles, the importance of selecting qualified staff cannot be over emphasized. The key to a successful recreational program lies in the ability of its staff to gain the trust of juveniles and to involve them in constructive and meaningful activities. The ability of the staff to organize recreational activities designed to attract juveniles is also crucial. The staff must be able to understand the problems of youth and to work with them in a sensitive manner. To accomplish these objectives, *Report of the Task Force, supra* at Standard 3.38 and Commentary suggests that recreational staff be trained in casework, community organization, leadership, and youth counseling. Staff personnel should be familar with community resources to enable them to make referrals when necessary. This requires developing and maintaining good relations with community groups. *Report of the Task Force, supra* at Standard 3.38 and Commentary also recommends that recreational leadership reflect the racial and ethnic make-up of the community to insure sensitivity and to provide the means of attracting a wide range of juveniles.

Recreational programs may be initiated by educational systems, *see* Focal Point Social Institutions, Strategy, Cor. Ed-4, community groups, religious groups, *see* Focal Point Individual, Strategy, Cor. R-1 or governmental organizations. *See* Focal Point Social Institutions, Strategy, Cor. J-1. Their success, however, depends on adequate support. *See* Standards 1.121-1.126, and 1.131-1.134.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.425	Personnel Providing Direct Services to Juveniles
1.429	Administrative Personnel

Related Strategies

Focal Point Individual:

Cor. Rc-1	Expansion of Recreational Opportunities
Cor. R-1	Counseling

Focal Point Social Institutions:

Cor. J-1	Police-Youth Relations
Cor. Ed-4	Utilization of School Facilities

Focal Point: Social Institutions
Type of Prevention: Corrective
Area of Emphasis: Housing
Strategy: Cor. Ho–1
Provision of Adequate Shelter

Provision by all levels of government of adequate housing for low income families through the expansion of new housing units and the renovation of existing housing.

Commentary

This preventive strategy relates to housing conditions which may negatively influence a juvenile and contribute to delinquent behavior and neglect of children. Providing adequate shelter for all citizens must become a societal goal. This strategy takes a corrective approach to formulating and implementing plans to attain this objective.

Providing adequate shelter should be part of any juvenile delinquency prevention plan for two reasons. First, research studies have shown that there is a relationship between delinquency and deteriorated housing. Second, there are strong correlations between rates of delinquency and housing density. National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.39 (1976) [hereinafter cited as *Report of the Task Force*].

There are many ways in which substandard, over-crowded housing can affect a juvenile and contribute to the conditions upon which juvenile delinquency feeds. Poorly maintained buildings are places where crime is easier to commit and harder to detect. Brightly lit open spaces do not encourage criminal activity in the way that dark, shadowy hallways do. Empty apartments pose similar problems since they provide places to hide. The National Advisory Committee on Criminal Justice Standards and Goals discussed the lack of community ties in relation to inadequate housing. It stated that "inadequate housing may actually destroy community life and encourage many forms of deviant behavior." *Report of the Task Force, supra* at Standard 3.39 and Commentary.

The lack of privacy in substandard housing can also negatively affect a juvenile. The juvenile may turn to the streets more often if his/her home is overcrowded or unpleasant. Crowded conditions at home can result in family tension and physical outbursts. Once family problems exist, there is a greater risk that the juveniles will misbehave in order to vent hostility and hurt feelings.

Another result of poor housing is poor health. Poor housing is just plain dangerous. Loose fixtures, broken stairs, debris, poor plumbing, fire hazards, and peeling paint pose real health dangers. Commentary to other prevention strategies indicate the relationship between health problems and juvenile delinquency. *See* Focal Point Individual, Strategies, Cor. H-1, Cor. H-2, Cor. H-3, and Commentaries.

Finally, on a psychological level, there is a negative impact on the sensitive juvenile who has to live in poor housing. A positive self-image is essential for a juvenile to develop properly and to stay out of trouble. Poor housing does not assist in this development.

The strategy calls for participation by all levels of government to provide for housing. The National Advisory Committee on Criminal Justice Standards and Goals also called for a coordinated effort by all housing and urban development agencies. *See Report of the Task Force, supra* at Standard 3.39. Local authorities should be responsible for identifying housing needs and then addressing them in their juvenile delinquency prevention programs. *See also* Standards 1.112, 1.122, and 1.124; *Report of the Task Force, supra* at Standards 2.1, 2.3, 2.4, and 2.9.

Adequate housing can be provided in two ways. New housing units can be built and/or existing buildings can be renovated. This strategy does not indicate a preference. *Compare Report of the Task Force, supra* at Standard 3.39. In building new housing, authorities should consider whether shopping, recreation, and transportation opportunities are adequate. One effective approach to providing housing is the concept of "scattered site housing" in metropolitan areas. Scatter site housing is public construction of a few units of low income housing in middle class residential areas. Large low income housing projects have proved to be very expensive and are sometimes thought to be a social failure.

The housing plan that is chosen should be an integral part of a community's delinquency prevention program. Good housing provides a safe and healthy environment in which to rear children and eliminates conditions which are conducive to criminal activity.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.429	Administrative Personnel

Related Strategies

Focal Point Social Institutions:

Mec. H-1	Neighborhood Security

Focal Point:
Social Institutions
Type of Prevention:
Instructional
Area of Emphasis:
Juvenile Justice System
Strategy: In. J-1
Preventive Patrols

Provision of programs by law enforcement agencies to increase the number of patrolmen walking a beat in neighborhoods identified as having a high rate of juvenile delinquency.

Commentary

This strategy recognizes the important contribution that policemen walking a beat can have in juvenile delinquency prevention. These patrols serve two prevention functions. By walking a beat, a police officer maintains a constant but not unnecessarily obtrusive surveillance of an area. His presence is a reminder to those who would commit crime that the chances for successful completion of the act are small, while the risks of detection are high. *Cf.* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 5.1 (1976).

Secondly, the presence of an officer familiar with the juveniles and aware of the problems of the neighborhood, creates an atmosphere where positive interaction between juveniles and law enforcement personnel can occur. *See* Standard 2.251 and Commentary. As their relationship improves, links between the community and law enforcement agencies improve. With this improvement, acts of delinquency may decrease.

Related Standards

1.421	Law Enforcement Personnel
2.251	Police Juvenile Units
2.252	Specialization Within Patrol Units
2.253	Personnel Policies

Related Strategies

Focal Point Individual:

Cor. Rc-1	Expansion of Recreational Opportunities

Focal Point Social Institutions:

Cor. J-1	Police-Youth Relations
Cor. Rc-1	Expansion of Recreational Opportunities
In. J-2	School Based Deterrence

Focal Point: Social Institutions
Type of Prevention: Instructional
Area of Emphasis: Juvenile Justice
Strategy: In. J-2
School-Based Deterrence

The provision of school-based programs to youth concerning the purposes, operation, and regulations of the juvenile justice system.

Commentary

The school as a social institution has a profound effect on juveniles. Juveniles spend so much of their time in school that it is imperative to use the school as a resource for prevention of delinquency and child neglect. *See generally* Westinghouse National Issues Center, *Delinquency Prevention: Theories and Strategies* (draft, April 1979). By establishing school-based programs to teach the purpose, operation, and regulations regarding the juvenile justice system, children can begin to see the importance of maintaining social tranquility. Further, some juveniles made aware of the implications of delinquent activity, the chances of detection, and the threat of punishment, may be deterred from committing crime.

School-based deterrence programs provide a neutral setting in which juvenile justice personnel and juveniles can meet to discuss the positive elements of the juvenile justice system. This is an essential ingredient for building trust and respect for the law. At the same time, juvenile justice personnel who participate in these programs may gain insight into the problems of youth that may assist them in their work.

The most common of these programs are those which invite the police officer, attorney, or judge to school to address the school body. Police officers also lecture on traffic and bicycle safety and conduct precinct and/or court tours. Another type of program which may be initiated by a local police department involves the permanent assignment of a police officer to a school. Attitudes of police officers and juveniles toward each other may improve if the police officer is seen as an unofficial counselor or confidante. *See* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems*, Standard 4.2 and Commentary (1977). *See also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.32 (1978). Participation in seminars can also improve communications between schools and social service agencies.

One of the more exciting programs now in existence is the National Street Law Institute located in Washington, D.C. Funded in part by LEAA and supported by the American Bar Association Special Committee on Youth Education for Citizenship, the program utilizes law students and specially trained teachers to educate children regarding various areas of law. The goal of the program is to teach critical thinking and legal survival skills as well as encourage youth advocacy skills through its mock trial program. Similar programs are sponsored by the Constitutional Rights Foundation in Los Angeles, California, and the Law in a Free Society Project in Calabassas, California. Such programs can enhance respect for the law and assist in the prevention effort.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
1.426	Educational Personnel

Related Strategies

Focal Point Social Institutions:

Cor. J-1	Police-Youth Relations
In. J-2	Preventive Patrols

Focal Point: Social Institutions
Type of Prevention: Instructional
Area of Emphasis: Media
Strategy: In. M-1
Media as a Method of Education

Provision by private and public media groups of resources designed to present positive images for youth and to enhance law-abiding conduct.

Commentary

The media has a profound impact on our society. Juveniles are in a stage of emotional and intellectual development that makes them very susceptible to its influence. This vulnerability can be put to good advantage, however, if public and private media groups use their influence to develop positive role models for emulation.

The messages of television, radio, and print media all affect a juvenile. Stereotypic views of society portrayed by the media may give the juvenile a distorted and prejudiced way of looking at society. For the Black, Puerto Rican, or Chicano child who sees juvenile delinquents portrayed only as minority members, participating in delinquent behavior may merely be fulfilling a societal expectation.

For the child who lives his/her life through television, violence can become exciting. Educators believe that great amounts of television viewing may detract from a juvenile's creativity and curiosity. In addition, television commercials can increase a juvenile's feelings of materialism and heighten his/her sense of the division between the poor and the rich in our society. For poor children whose parents cannot buy them the many toys and games that are advertised on television, frustration may result. This frustration can be the impetus to shoplift what is not affordable.

Despite the negative effects that the mass media can have on juveniles, the media can be a positive and powerful tool in preventing juvenile delinquency. Television, radio, and print media which portray positive, meaningful messages can be as effective an education tool as the traditional schoolroom or parental lecture. The National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.43 (1976) emphasized the importance of providing a role for juveniles in media program productions. "Young people should have an opportunity both to advise those responsible for television programming and advertising, and to participate in programming when possible." *Id.* By also using audio-visual programs within the school system, the role of juveniles in the media can be expanded.

Local efforts within the television, radio, and print media should focus on programming for the young which will instill positive images and enhance law-abiding conduct. Positive role models for juveniles can effectively shape and modify behavior toward socially productive goals. Viewing or reading about peer members who are functioning in society without getting into trouble and yet who seem "normal" and fun-loving can help juveniles resist peer pressure to commit delinquent acts and help them to remain law-abiding citizens.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection

Related Strategies

Focal Point Social Institutions:

Cor. Ed-2	Alternative Education
Cor. Ed-3	The Home as a Learning Environment

Focal Point:
Social Institutions
Type of Prevention:
Mechanical
Area of Emphasis:
Justice System
Strategy: Mec. J-1
Citizen Efforts to Prevent Delinquency

Provisions of community mechanisms to encourage and involve citizens in efforts to prevent and control delinquency.

Commentary

An underlying theme running throughout these standards and prevention strategies is the importance and value of the community as a resource for juvenile delinquency prevention. This strategy is concerned with encouraging community involvement on an individual basis. Conditions in a community are related to juvenile delinquency. It is, therefore, imperative that each member of the community addresses the problems of juvenile delinquency.

Juvenile delinquency is more than just an individual behavioral problem. It involves community organizations and structure to a great degree. *See generally* Westinghouse National Issues Center, *Delinquency Prevention: Theories and Strategies* (draft, April 1979). Community stability, interest, and participation in programs for juveniles make juveniles less vulnerable to crime.

Responsibility for crime prevention does not lie with law enforcement agencies alone, nor are law enforcement agencies alone that effective. A concerted effort by the community, law enforcement and social service agencies, and the school system is necessary to combat juvenile crime. *Id.* Without community involvement, responsibility for combating juvenile delinquency is left to impersonal public agencies which are too large and often too removed to be responsive to specific neighborhood needs. Because of their organization, these public agencies cannot be as effective in a preventive role as the local community can. Designing and implementing a juvenile delinquency prevention program involves a keen awareness of the community and its strengths and weaknesses. For that reason, local involvement in planning and establishing a program becomes essential. *See* Standards 1.111-1.114 and Commentary.

This strategy contemplates that the juvenile justice system will encourage citizen involvement in the prevention process. The justice system should actively sponsor and mobilize citizen activities. This may include involving local citizens in the plans and decisions of government agencies, encouraging citizens to attend community relation meetings set up by the local precinct, soliciting volunteers for juvenile service programs, and establishing citizen surveillance programs. Lobbying for programs described in other strategies is also an important activity of community groups.

The National Advisory Committee on Criminal Justice Standards and Goals advocates the use of block crime prevention associations or police supervisory boards, and local chambers of commerce to survey police effectiveness, propose effective methods of selecting judges, and promote support for community-based corrections facilities. National Advisory Committee on Criminal Justice Standards and Goals, *Community Crime Prevention,* Standard 4.6 (1973). These boards and associations should be independent of the police and the courts. A wide range of persons should also be consulted in the formulation of police policy affecting juveniles. *Id.* Police departments should establish citizen participation programs to aid in assessing the effectiveness of police department operations regarding juveniles. *Id.* at Standard 7.4.

There are other citizens' activities which can be encouraged by the police. Crime reporting programs can effectively involve citizens in a juvenile delinquency prevention program. These programs encourage citizens to report crimes in the process of being committed, provide information that may aid police in solving crimes, and report persons and events considered suspicious. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task*

Force on Juvenile Justice and Delinquency Prevention, Standard 3.30 (1976). Other community activities to reduce crime include marking property by owners or police to reduce burglary, and using local alarm systems and citizen street patrols.

Citizens can also become involved in court related activities. Volunteers can provide services ranging from explaining the court process to juveniles and their families to volunteering to participate in probation programs.

In sum, this strategy recognizes that a comprehensive effort is necessary to make a juvenile delinquency prevention program succeed. While economic resources and effective administration are important components of a prevention program, they are only successful if an active citizenry joins in the effort.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
2.251-2.253	Police Juvenile Units

Related Strategies

Focal Point Individual:	
Cor. Rc-1	Expansion of Recreational Opportunities
Focal Point Social Institutions:	
Cor. J-1	Police-Youth Relations
In. J-2	School-based Deterrence
Mec. H-1	Neighborhood Security
Mec. F-1	Behavior Patterns
Focal Point Social Interaction:	
Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct
Re. J-1	Statutory Changes and Reform

Focal Point: Social Institutions

Type of Prevention: Mechanical

Area of Emphasis: Justice System

Strategy: Mec. J-2

Hand Gun Control

Enactment of federal and state legislation to prohibit the manufacture and sale of handguns for other than official purposes.

Commentary

This strategy seeks legislative action by federal and state governments in the form of a ban on the manufacture and sale of handguns for other than official purposes. When a handgun is easily available, a juvenile is more likely to have access to it and consequently more likely to commit a violent crime. However, if that weapon is made difficult or impossible to procure, the chance of violent acts and bodily harm occurring decreases. *Accord*, National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.33 (1976) [hereinafter cited as *Report of the Task Force*].

The Commentary to the *Report of the Task Force, supra* at Standard 3.33 recognizes that barring the sale and manufacture of handguns except for official purposes will be difficult.

> "Under the Nation's government structure, restriction of citizens' privileges never is an easy step to take, and never will such a decision be supported by everyone. But, on balance, the arguments for eliminating private possession of handguns have much greater merit than the arguments for permitting possession of handguns for legitimate purposes." *Report of the Task Force, supra* at Standard 3.33.

However difficult it would be to bar the sale and manufacture of handguns except for official purposes, there are shocking statistics which support the National Advisory Committee's recommended action. In 1976, 9,202 persons were murdered with handguns in the United States. Sixty-eight percent of all murders in 1975 occurred among family members, friends, and acquaintances because a loaded handgun was available. There are 3,000 accidental gun deaths each year. Children and young adults are the most frequently victimized. *See* National Coalition to Ban Handguns, "Self-Defense," (1976); and "Twenty Questions and Answers on Handgun Control," (1977) [hereinafter cited as NCBH, "Handgun Control"].

The obvious reason a homeowner possesses a handgun is for self-defense. However, for every burglar stopped by a gun, four to six homeowners or family members are killed by a gun in accidents. When a homeowner keeps a handgun in the home, there is a great risk that children will discover it. The consequences may be grave. A juvenile may take it out on the streets or carelessly handle it and become the victim or perpetrator of a firearm accident. *See* NCBH, "Handgun Control," *supra*.

It has been argued that even if handguns are banned, a violent crime would still be committed with another weapon. However, no other weapon is as certain to kill as a gun, nor is any other as efficient. Handguns are especially easy to conceal and convenient to use. *See* NCBH, "Handgun Control," *supra*.

There is no doubt that the issue of handgun control is controversial. Some special interest groups see the issue as one of government infringement upon an inalienable right of the people to bear arms. Others see it as a forceful and direct action necessary to preserve human life. The National Advisory Committee determined that while certain rights of the people were involved, action by legislators to restrict the sale and manufacture of handguns was not an unreasonable action. The benefits to be gained by the citizenry in the reduction of violent crimes and the preservation of human life greatly outweigh any right a private individual may have to possess a handgun.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.131-1.134	Organization and Coordination of the Federal Juvenile Service System
1.21-1.29	Data Base Development and Collection
2.251	Police Juvenile Units
3.125	Employment of a Court Administrator

Related Strategies

Focal Point Social Institutions:

Cor. J-1	Police-Youth Relations
In. J-2	School-based Deterrence
Mec. J-2	Hand-gun Control

Focal Point Social Interaction:

Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct
Mec. J-1	Citizen Efforts to Prevent Delinquency

Focal Point: Social Institutions
Type of Prevention: Mechanical
Area of Emphasis: Housing
Strategy: Mec. H-1
Neighborhood Security

Utilization of improved environmental design and sercurity codes in urban areas to discourage delinquent and criminal activity.

Commentary

This strategy recognizes the role that the physical environment plays in urban communities in either discouraging or encouraging delinquent and criminal activity. The approach of this strategy is similar to Focal Point Individual, Strategy, Cor. Ho-1 in that it focuses on an external condition that may influence a juvenile's actions rather than on the juvenile. However, the type of prevention strategy it employs is different. This strategy is concerned with making delinquent acts more difficult to commit rather than dealing with crime as a symptom of other conditions which need correcting.

There are many ways to discourage delinquent and criminal activity through neighborhood security. The rationale underlying each tactic is that the opportunity to commit crime must be reduced. Direct methods to accomplish this goal include better street lighting, security hardware, building design, and surveillance. These tactics reduce the possibility that a crime will be committed. Further, when a crime is committed there is a greater chance of detection if security measures make completion of the crime less rapid than otherwise.

Street lighting can be improved through the installation of sodium vapor or mercury vapor lamps. Better lighting increases the chances that a perpetrator of crime will be seen and therefore deterred or at least apprehended. More importantly, it encourages residents to walk on the street and use public areas which also reduces the incidence of crime.

Greater consideration should be given to security features when parks, playgrounds, and commerical areas are planned. Adequate lighting should be designed in accordance with the character and need of the area in which the program is to be implemented. Citizen support and attitudes determine the effectiveness of such programs. Consequently, citizen groups should be involved in any street lighting program. National Advisory Committee on Criminal Justice Standards and Goals, *Community Crime Prevention*, Standard 9.2 (1973).

Security systems can deter the commission of a criminal act and increase the time it takes to complete it. Some security measures can be taken by the individual; others need community implementation. Unfortunately, while housing is built according to fire, safety, and health codes, nothing similar has been demanded for security in housing. This strategy recommends the adoption of such security codes. *Accord, Id.* The National Advisory Committee on Criminal Justice Standards and Goals indicates the function of these codes. They can lay the groundwork to legitimize crime prevention as a responsibility of the community, reassure the citizens of the responses of government to their needs, increase citizen awareness of different means of crime prevention; and bring pressure upon the security industry to improve its products *Id.* at Commentary.

Other effective security measures which can be taken include installing locks, doors with security hinges, burglar and vandal resistant glass, alarm and intercom systems, and the speical placement and design of elevators, doors, and windows. It is expecially important that this issue be addressed in a juvenile delinquency prevention plan since the young and inexperienced person may be more easily discouraged from committing criminal acts if security seems extensive.

An effective use of building design can increase the ability of residents to survey the area in which they live. Thus the chance that delinquent and criminal activity will go unnoticed is decreased. Oscar Newman, in his book ***Defensible Space: Crime Prevention Through Urban Design*** (1972), contends that increasing feelings of community among residents encourages them to take charge of their own security. Newman recommends designs and locations of housing which increase surveillance opportunities. Some examples include the following:

1) Making semipublic areas such as elevators, halls, lobbies, and fire stairs visible to residents and passersby;
2) Positioning front entrances along the street;
3) Designing lobbies so that all internal activity is visible from the street;
4) Providing visibility into semiprivate areas such as paths and hallways from windows; and
5) Monitoring elevators with electronic surveillance devices.

Since the ability to observe is meaningless without a quick and appropriate response, a sense of community among residents is essential. Newman suggests fostering a feeling of proprietorship by designing buildings so that the residents can easily identify areas around their homes as their own. Very large buildings with great density tend to create feelings of isolation and anonymity among residents rather than feelings of responsibility and ownership. To eliminate this shortcoming in existing large buildings, special security measures should be implemented.

The utilization of improved environmental design and security codes in urban areas is important to discourage delinquent and criminal activity and should be part of a juvenile delinquency prevention program. In and of itself, this is an effective tool to deter crime. Coupled with other strategies, it can be part of a more comprehensive attempt to guarantee both safe and adequate housing.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection

Related Strategies

Focal Point Social Institutions:

Cor. F-1	Provision for Basic Needs
Cor. Ho-1	Provision of Adequate Shelter
Mec. J-1	Citizen Efforts to Prevent Delinquency

Focal Point:
Social Institutions
Type of Prevention:
Mechanical
Area of Emphasis:
Family
Strategy: Mec. F-1
Behavior Patterns

Community-based dissemination of crime prevention information based on practical and proven steps to safeguard individuals who are most frequently victimized by delinquent acts.

Commentary

Very often people and property are victimized because preventive measures have not been taken. In some cases the lack of caution is merely a matter of carelessness. However, in other cases people are not aware of the measures they can take to limit their vulnerability. Community-based dissemination of crime prevention information is an important means of preventing criminal acts.

An evaluation of recent research suggests that the juveniles and not the elderly are the most victimized of all citizens. *See* U.S. Department of Justice, Law Enforcement Assistance Administration, *Myths and Realities about Crime* (1978). While senior citizen groups have directed a great deal of their educational activity toward methods of preserving their personal safety and protecting their property, few programs have been developed to educate young people or handicapped people to avoid victimization. This strategy recommends that efforts be undertaken immediately.

A community wishing to implement such programs should review police reports in order to determine which group within the community is victimized in a disproportionate manner. Ideally, information regarding crime prevention should be disseminated to the entire community. However, a concentrated effort should be directed toward the most victimized groups first.

Many successful measures are relatively easy to implement. Houses should be well-illuminated on the outside, especially in high crime areas. Those persons leaving their homes for extended periods should have neighbors inspect periodically for security. A dark home with accumulating newspapers and an untrimmed lawn is an invitation to crime. Expensive appliances should be recorded by identification code numbers. This will make them difficult to sell and easy to identify.

Community groups should urge their local governments to allocate funds for adequate street lighting. Places of business may wish to equip their establishments with video monitors and security guards or lighting to discourage shoplifting and burglary. Most of all, individuals should be made aware of places to avoid, habits to change, and other methods of insuring self-protection.

Public awareness campaigns sponsored by law enforcement officials are an important asset to any community wishing to educate citizens. Simple and uncostly measures taken early may prevent costly losses to persons and property later.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection

Related Strategies

Focal Point Social Institutions:

In. M-1	Media as a Method of Education
Mec. J-1	Citizen Efforts to Prevent Delinquency
Mec. H-1	Neighborhood Security

Theoretical Focal Point: Social Interaction
Type of Prevention: Corrective
Area of Emphasis: Justice System
Strategy: Cor. J-1
Diversion

The availability of appropriate state and local mechanisms to divert youth from the juvenile justice system either to alternative services or to their homes.

Commentary

This strategy recognizes that processing a juvenile through the justice system may not be the most effective way to prevent further juvenile delinquency. Many juvenile courts are already so overloaded with cases that additional juveniles would further diminish individual attention. The highly bureaucratic and impersonal nature of some juvenile justice systems lends additional support for diversion. But the most important reason for diversion is the ill-effect that the system can have on some juveniles.

If a juvenile is labeled by the system, he/she sometimes becomes stigmatized. The juvenile's family, friends, and school officials may treat the juvenile differently. *See* Westinghouse National Issues Center, *Delinquency Prevention: Theories and Strategies* (draft, April 1979). Certain expectations are set for the youth who may then see no alternative but to continue committing delinquent acts. Rather than assisting the juvenile, the court experience may produce a negative self-image. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 3.29 and Commentary (1976). *See also* National Advisory Commission on Criminal Justice Standards and Goals, *Community Crime Prevention*, Chapter 3 (1973).

Implementation of this strategy would eliminate formal contact with the justice system for some juveniles. Some acts now labeled delinquent or criminal misbehavior could be redefined. Juveniles committing other acts prohibited by the criminal code could be diverted away from the courts to social service or community agencies and to youth service bureaus. Youth service bureaus should provide direct services to juveniles or refer juveniles to other community resources. *See Youthful Offenders Program—Program Evaluation Final Report* (N.C.J.R.S. Accession Number 09900.00.068517); *Youth Service Bureaus in California—Progress Report* (N.C.J.R.S. Accession Number 09900.00.009498).

Such programs can be used to provide direct service to first or second offenders. They can provide jobs for youths in community agencies and in the public schools, and provide counseling and referral services as well as treatment and residential programs. *Youthful Offender Program—Program Evaluation Final Report* (N.C.J.R.S. Accession Number 09900.00.048517). It is important to note that not all juveniles will necessarily be eligible for diversionary programs. Some programs limit their target population to first offenders, status offenders, runaways, or misdemeanants. However, the development of more diversion programs is crucial for minimizing the use of the juvenile justice system.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
3.112	Jurisdiction over Noncriminal Misbehavior

Related Strategies

Focal Point Social Interaction:

Cor. J-2	Alternative Approaches to Juvenile Misconduct
Cor. E-1	De-emphasis on Labeling
Re. J-1	Statutory Changes and Reform

Theoretical Focal Point: Social Interaction
Type of Prevention: Corrective
Area of Emphasis: Justice System
Strategy: Cor. J-2
Alternative Approaches to Juvenile Misconduct

The development of alternative methods with which to deal with youth involved in noncriminal misbehavior.

Commentary

Noncriminal misbehavior, otherwise known as status offense activity, may include truancy, running away without parental permission, incorrigibility, drinking, promiscuity, and any number of acts which are not criminal if committed by an adult. There is much controversy over whether a family court should have jurisdiction over this type of conduct. The National Advisory Committee has, however, advocated limited family court jurisdiction as a last resort for this type of conduct. *See* Standard 3.112 and Commentary. In doing so, the Committee strongly urged that federal funds should be made available to assist any jurisdiction willing to abolish court jurisdiction over noncriminal misbehavior or willing to provide necessary services to juveniles and their families on a voluntary basis, and to evaluate the results and impact of these changes. *Id.*

This strategy recommends that alternative methods be developed with which to deal with juveniles accused of noncriminal misbehavior as a prevention measure. While family court jurisdiction over these acts may exist, alternatives to court intervention are to be preferred whenever possible. The acts these juveniles have committed are not crimes and seldom pose a threat to the community. Further, the stigma involved and the exposure to those more sophisticated in criminal activity can make the family court experience a negative one. The types of suitable alternative methods with which to deal with these juveniles are similar to those discussed in Focal Point Social Interaction, Strategy, Cor. J-1, and Standard 3.112 and Commentary.

Related Standards

1.111-1.114	Organization of the Local Juvenile Service System
1.121-1.126	Organization of the State Juvenile Service System
1.21-1.29	Data Base Development and Collection
3.112	Jurisdiction over Noncriminal Misbehavior

Related Strategies

Focal Point Social Interaction:

Cor. J-1	Alternative Approaches to Juvenile Misconduct
Cor. E-1	De-emphasis on Labeling
Re. J-1	Statutory Changes and Reform

Theoretical Focal Point: Social Interaction
Type of Prevention: Corrective
Area of Emphasis: Education
Strategy: Cor. E-1
De-emphasis on Labeling

The development of methods to limit and restrict the labeling of youth in the educational setting due to social, physical, emotional, intellectual, and economic limitations.

Commentary

A juvenile may be labeled deviant anytime he/she socially interacts in a way which is disapproved of by society or possesses a characteristic viewed as abnormal by the educational system. The position adopted by this strategy is that labeling a juvenile is self-defeating and stigmatizing and may result in differential treatment by family, friends, and school officials. Once a set of certain expectations is created for a juvenile, he/she often fulfills them. He/she begins to commit or continues to commit delinquent acts, performs at a substandard level academically, or behaves in a manner which is self-destructive. Consequently, a negative self-image is developed in the juvenile and the cycle of failure begins.

Labels like retarded, disturbed, and slow learner do little to alleviate a child's learning problem. It contributes to underachievement and low self-esteem. Some labels may be unavoidable. Their use, however, should be circumscribed. Goals and achievements should be stressed so that children, and not labels, become the focus of a community's efforts.

Labeling most often serves a bureaucratic or funding purpose. It contributes nothing to a juvenile's sense of self-esteem. Consequently, this strategy recommends that labeling be eliminated whenever possible in all systems serving youth. *Accord,* Westinghouse National Issues Center, *Delinquency Prevention: Theories and Strategies* (draft, April 1979). When used at all, the information should not be readily disseminated. *See* Standards 1.53-1.56. Some ways to accomplish this goal have been described in other strategies. Focal Point Social Interaction, Strategy, Cor. J-1 recommends that instead of adjudicating a child in the juvenile system, children should be provided with alternative services to divert them from the system. Focal Point Social Interaction, Strategy, Cor. J-2 recommends the development of alternatives to assist those juveniles engaging in noncriminal misbehavior. Various strategies address the problems of alternatives to labeling in the education system. *See* Focal Point Individual, Strategy, Cor. Ed-1-Cor. Ed-3; and Focal Point Social Institutions, Strategy, Cor. Ed-1 and Cor. Ed-2

Related Standards

1.21-1.29	Data Base Development and Collection
1.54	Completeness of Records
1.55	Accuracy of Records
3.112	Jurisdiction over Noncriminal Misbehavior

Related Strategies

Focal Point Individual:	
Cor. Ed-1	Learning Disabilities
Cor. Ed-2	Problems in Learning
Cor. Ed-3	Supportive Services
Focal Point Social Institutions:	
Cor. Ed-1	Comprehensive Programs of Learning
Cor. Ed-2	Alternative Education
Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct

Theoretical Focal Point: Social Interaction
Type of Prevention: Corrective
Area of Emphasis: Justice System
Strategy: Re. J-1
Statutory Changes and Reform

A federal, state and local effort to assess and modify existing legislation relating to juvenile delinquency.

Commentary

The National Advisory Committee Standards provide a model for a juvenile justice system and delinquency prevention system. The administration, prevention, intervention, and supervision functions are carefully outlined and address the full and wide range of issues affecting youth.

This strategy recommends that government planners reassess their juvenile systems with respect to those standards. Legislators should analyze their state statutes, remove outmoded or unfair laws and replace them with those suggested by the National Advisory Committee. Citizen groups should assist in lobbying for these changes. Standards in the chapter on the administrative function explain the role and responsibility of local, state, and federal governments for the planning, management, and evaluation of the juvenile service system. Included in this planning process is the development of a comprehensive juvenile delinquency prevention program after a careful assessment of needs and existing resources. The state agency is responsible for providing technical, financial and program resources in this planning process. *See* Standards 1.121-1.126. If the assessment indicates that changes in existing legislation are necessary, then such changes must occur.

The modification of existing legislation relating to juvenile delinquency must recognize that the form of a system also plays a role in determining its ultimate effect. If the system is fair and geared to assisting children and families in times of stress, respect for it will be engendered. If a juvenile justice system is viewed by the public as accountable and fair, it is likely to assist in the prevention of crime as well as in its punishment.

Standards in the Intervention, Adjudication, and Supervision Function, as well as provisions of the Administrative Function are directed to creating a fair system of juvenile justice geared to assisting children and families. If state systems do not reflect the policies of these standards they should be modified.

Related Standards

Administrative Function
Intervention Function
Adjudication Function
Supervision Function

Related Strategies

Focal Point Social Institutions:	
Cor. J-1	Police-Youth Relations
In. J-2	Preventive Patrols
Focal Point Social Interaction:	
Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct

THE ADMINISTRATION FUNCTION

The Administration Function

Introduction

This chapter addresses the organization and administration of the entire juvenile service system. Hence, the series of standards on the responsibilities and roles of each level of government, planning, evaluation, personnel selection, training, and records are intended to apply to the programs and activities described in the Prevention Chapter as well as to the agencies and courts discussed in the chapters on Intervention, Adjudication and Supervision.

The initial series of standards concerns the development of a multi-level planning and coordination process through which local communities in conjunction with a single state agency can identify their juvenile service needs and develop appropriate strategies for preventing delinquency and improving the juvenile justice system. Standards 1.111-1.114. The proposed organizational framework assigns the decision-making responsibilities to the local community, the level of government which is closest to the problems of youth and youth crime and most familiar with immediate resources and programs available. The state agency would be responsible for integrating local and state plans and services, providing necessary technical, financial, and programmatic resources to facilitate the planning process, and developing an evaluation process to assess state-provided services and state and local planning activities. Standards 1.121-1.126. The Federal Government's role would be to provide direction and appropriate resources, technical assistance, and training to the state and local communities. Standards 1.131-1.134.

The second series of standards focuses on the planning process. Standards 1.21-1.29. These standards delineate the necessary components of the process which the local community and the state can use to develop a plan to carry out the planning responsibilities described above.

The third series of standards concerns the development of an evaluation and research capability. Standards 1.31-1.32. It identifies the methods and mechanisms for providing information regarding the effectiveness of current programs, the scope of current problems, and the means for addressing those problems to assist the local, state, and federal planning process.

The fourth series of standards deals with the selection and training of juvenile service system personnel. Standards 1.41-1.429. The provisions on the selection stresses that the staff of law enforcement agencies, family courts, educational agencies, and other components of the juvenile justice service system should be chosen on a merit basis and should include men and women from a variety of ethnic and social backgrounds. The standards on training focus on specific types of personnel and recommend that perservice and inservice training be provided on the policies and assumptions underlying the juvenile service system as well as on techniques for dealing with juvenile problems.

The final series of standards in the Administration Chapter sets forth the principles which should govern the collection and use of records pertaining to juveniles. Standards 1.51-1.56. Specific standards relating to the compilation, maintenance, accuracy, and disposition of as well as access to such records are provided to assure both the preservation of important information and the protection of the youths who are the subject of that information.

In developing these recommendations, the National Advisory Committee recognized that the integration of state and local planning efforts into a coordinated planning process, and the extension of that process to delinquency prevention activities, would take time and dedication to achieve. Conflicts in values and goals will have to be accommodated and/or resolved, and institutional and individual relationships forged. However, it concluded that the creation of a more effective, more rational, and fairer juvenile service system was worth the effort involved.

1.1 Roles and Responsibility

1.11 Local-Level Participation

1.111 Organization of the Local Juvenile Service System

The local community in conjunction with the state agency described in Standard 1.121, should develop a juvenile justice and delinquency prevention planning and coordinating authority. The planning authority should be responsible for identifying and assessing all of the local juvenile service needs and should possess the capability for developing strategies to meet those needs according to established state standards and guidelines.

The composition of the local authority should consist of youth, the policy-making officials of the major juvenile service agencies including schools, local executive management and budget agencies, other governmental entities, citizen groups, businesses, and private nonprofit organizations providing services for juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 1.1, 2.1, 2.2, 2.5-2.9, and 25.3 (1976) [hereinafter cited as *Report of the Task Force*]; *Report of the White House: Conference on Youth*, 722a-722b (1971); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice*, Standard 2.4 (A) and (C) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

The primary emphasis of this standard is the creation of a process by which the local community, be it a municipality, county, or multi-county region, can assess its juvenile service needs for combating juvenile delinquency and develop appropriate strategies utilizing available and supplemental financial, programmatic, and technical resources. Due to the uniqueness of each local community's political, historic, economic, and social characteristics, and its proximity to the problems caused by delinquency, it is best able and should have the opportunity to prioritize these problems and identify solutions, develop and operate specific programs, and obtain the feedback necessary to ascertain the effectiveness of various programmatic approaches.

State role should be that of a facilitating and supporting agent rather than directly controlling local planning and activities.

Since the standard recommends that the local community should have the primary responsibility and capacity to address the problems of both delinquency prevention and control through a system-wide approach encompassing the entire local juvenile service system, the second paragraph of the standard recommends that composition of the local planning authority be drawn from the policy-making levels of the schools and other major juvenile services agencies (preferably the chief administrative officers), governmental entities, citizen groups, businesses, and youth. To assure that the youth representatives have the opportunity to actively and effectively participate in the decision and policy-making processes, the planning authority should afford appropriate training in such areas as group process, decision-making analysis of social systems, parliamentary procedures, research, and evaluation techniques. It should also encourage the adult members to accept and solicit the youth representatives' participation, share with them their experience and expertise, and advocate for an expanded role for youth in all aspects of the juvenile service systems. *See generally Report of the Task Force, supra* at Commentary to Standard 2.7.

There are a number of government levels, agencies, and community groups that should be involved in coping with

> delinquency. Each of these has an important stake in the prevention effort and each holds resources, legal authority, expertise, and political power necessary to support effective programming in the delinquency area.

The 1976 Standards and Goals Report also recommends a separate local juvenile justice planning agency. *See Report of the Task Force, supra* at Standard 6.1.

The IJA/ABA standards suggest that states should provide for local juvenile justice boards in each city and county as a final organizational element in a process of decentralizing various aspects of juvenile justice services and planning through state and component regional youth service agencies. Under this plan, the local entity would be responsible for monitoring and supervising juvenile services within the community as well as planning and initiating program proposals in an advisory capacity to the state and regional service agencies. *See* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 2.4(b).

> Since the local boards are, for the purposes of planning, the most effective agencies for directly involving those who are concerned with juvenile justice services, this standard provides them a clear role in the planning process either as respondents to other agencies' proposals or as initiators of their own programs. While the effectiveness of the local boards in influencing the outcome of the overall state planning process depends, to a great extent, on the openness of the central and regional agencies to the initiatives and priorities of community, they still appear to be the best opportunity to obtain a meaningful level of citizen involvement in juvenile justice planning. *Id.* at Commentary to Standard 2.4(b).

While all of the recommendations, including those of the National Advisory Committee, suggest increased policy-making authority for the local community, the IJA/ABA standards limit local participation to an advisory role to a more powerful decentralized State Children's Agency. The *Report of the Task Force, supra,* as well as Standard 1.121 recommends that the establishment of the local planning authority would necessitate enabling state legislation. The legislation should provide the authority resources, statewide structure, and other assistance necessary to organize the local juvenile service system and provide supportive linkages between local communities and the state and federal governments.

There are many similarities between the recommendations of this standard and those of the *Report of the Task Force, supra* IJA/ABA *Planning for Juvenile Justice, supra*, and Kobetz and Bosarge, *supra.* A recommendation in *Juvenile Justice Administration* identifies the goal of a similar community planning and coordinating entity.

> The primary goal of such a council would be to provide a vehicle for the restructuring of individual agency organizations from independence to interdependency upon each other for the effective delivery of services to youth. Such interdependency would enable the components of the juvenile justice system to treat the child as a 'whole person' rather than as a collection of 'symptoms.' The organization of the present juvenile justice system is haphazard and fragmented. The proposed Juvenile Justice Coordinating Council would restructure the system into a true 'organization.' Kobetz and Bosarge, *supra* at 58-59.

The *Report of the Task Force, supra,* also emphasized the importance of the local community and recommended a planning process for determining what the problems are, suggesting possible solutions, operating specific programs and providing feedback on the success or failure of programmatic approaches.

> An Office of Delinquency Prevention Planning should be established within appropriate units of local general purpose government. This office should be responsible for coordination of local prevention efforts on an ongoing and permanent basis. *Report of the Task Force, supra* at Standard 2.2

> Within a general framework of federal and state guidance and support, the principal centers for innovation and action in developing useful delinquency prevention tools appear to be at the local level and particularly at the community level. *Report of the White House Conference on Youth, supra* at 7.22(a).

If the majority of juvenile service provision is at the local level, then resolution of divergent problems, purposes, methods, and goals should be accomplished by the local agencies responsible for juvenile service provision. *See generally Report of the Task Force, supra* at Standard 2.1; IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 2.4; and Kobetz and Bosarge, *supra* at 57 and 58.

The initial paragraph of the standard, together with Standard 1.21, recommends that the local community, in conjunction with the appropriate executive state agency, organize the various components of the local juvenile service system into a planning and coordinating authority. This cooperative local and state effort, should provide a mechanism through which the decision makers of the community and particularly of the juvenile service agencies, can collaborate among themselves, and when necessary with their state-level counterparts, in the development of interagency, interjurisdictional and interdisciplinary approaches to delinquency prevention and control. While the state agency should assist the local communities in the initiation, maintenance, and evaluation of their planning and coordinating responsibilities, considerable latitude should be given to the local authorities to fulfill their responsibilities in accordance with their needs and resources and established standards and guidelines.

> But unfortunately, a mechanism is rarely provided for all the essential participants in successful prevention efforts to unite in a systematic fashion to plot out a comprehensive approach to delinquency prevention.

Capacity for action in any delinquency effort can be expected only after the parties exercising control over necessary resources have come to some agreement about plans of action. Advisory roles in themselves are not sufficient. *Report of the Task Force, supra* at Commentary to Standard 2.5.

Staff assistance for the local planning units should be available from the state agency. *See* Standard 1.121. The regular planning staff responsible for assisting the local planning unit on a continuing basis in the development and implementation of an annual plan should reside in the assisted community.

Specialized staff from the state agency should also be available, as needed, to advise and assist the local planning unit and staff in particular areas of the planning and development process, e.g., statistical compilation and interpretation, and program design. While the local planning staff is accountable to the state agency for the organization and administration of the local office, it should also be responsible to the dictates of the local planning authority in the preparation and implementation of the local plan. *See* Standards 1.122, 1.123, 1.124 and 1.125; *see generally Report of the Task Force, supra* at Standard 2.2; IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 2.4(D); and Kobetz and Bosarge, *supra* at 60-63.

> Staff personnel of the prevention office should reflect the best available professional talents. They should be able to offer technical assistance and provide useful information to all participants in the planning process. The success of the prevention effort, however, depends upon the ability of various segments of the community to come together to develop specific programs and resources. Therefore, staff members should act not only as professional planners but also as facilitators and coordinators of the prevention efforts of all community groups. *Report of the Task Force, supra* at Commentary to Standard 2.2

The local planning authority recommended in this standard together with the state and federal agencies recommended in Standards 1.121 and 1.131 represents an intergovernmental structure designed to assist the local community in utilizing the divergent resources of each level of government in order to address the problems of delinquency prevention and control. To assure careful consideration of these delinquency problems and appropriate corrective strategies, the utilization of a planning methodology is recommended for the local and state level in Standards 1.112 and 1.122. State and federal-level supportive and sustaining services such as technical assistance, training, standards development, and program coordination are recommended in Standards 1.123-1.125 and 1.132-1.134 to facilitate the community level implementation. Coordination and evaluation activities are addressed in Standards 1.113 and 1.114.

Related Standards

1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local-level Juvenile Service System Program Efforts
1.121	Organization of the State Juvenile Service System
1.122	Development of a State Juvenile Service Plan
1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
1.126	Office of Youth Advocate
1.131	Organization and Coordination of the Federal Juvenile Service System
1.132	Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Allocation of Financial and Technical Resources
1.134	Evaluation of Federal, State, and Local Activities
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development
1.27	Program Coordination
1.28	Program Development
1.29	Program Implementation
1.31	Development of an Evaluation System
1.427	Planning personnel

1.112 Development of a Local Juvenile Service Plan

The local planning and coordinating authority should develop a juvenile service plan in accordance with the requirements of the state agency described in Standard 1.121.

The local juvenile service plan should address those aspects of the services provided to juveniles related to delinquency prevention, law enforcement, adjudication, and supervision, and should contain the following components:

- **a. Background data;**
- **b. An inventory of local juvenile service resources;**
- **c. Problem identification and analysis;**
- **d. A statement and prioritization of needs;**
- **e. A statement of juvenile service system goals; and**
- **f. A description of program strategies.**

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 1.1-1.5, 1.7, 2.1, 25.2-25.4, 26.1-26.5, and 27.1-27.4 (1976) [hereinafter cited as *Report of the Task Force*]; *Report of the White House Conference on Youth,* 772(a)-722(b) (1971); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice* (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard outlines the necessary components for the development of a local juvenile service plan. The local-level planning process should follow the state agency guidelines regarding content and format to expedite implementation, statewide coordination and allocation of financial and technical resources. *See* Standard 1.122.

While the primary objective of the planning process is to provide the local community with a comprehensive plan to meet its problems and needs, particularly in the juvenile justice and delinquency prevention areas, it also affords a means of educating local and state decision makers about the local juvenile service needs as well as the functions, responsibilities, and goals of service providers. The planning process also develops channels of communication and can mediate many of the interagency disputes, jealousies, and jurisdictional difficulties which arise between service providers due to confusion over roles and responsibilities. Through the collective efforts of the local planning unit in identifying problems, categorizing resources, prioritizing needs, and developing goals and program strategies, conflicts can be resolved and cooperative decisions reached. *See Report of the Task Force, supra* at Commentary to Standard 1.1.

The local planning process should address those aspects of the services provided to juveniles related to delinquency prevention, intervention, adjudication, and supervision. It is anticipated that this process will bring together many of the separate planning efforts required for various state and federal programs, especially with regard to delinquency prevention. *See* Standards 1.121-1.125, and 1.131-1.34.

The standard sets forth six essential components which should be included in a juvenile service plan:

- a) Background data;
- b) An inventory of local juvenile service resources;
- c) Problem identification and analysis;
- d) A statement and prioritization of needs;
- e) A statement of juvenile service system goals; and
- f) A description of program strategies.

The local planning unit should utilize existing juvenile service system data collection efforts whenever possible. Specific guidelines regarding the type, quality, and frequency of information collection should be established by the planning authority. The data should be used initially to identify the scope and trends of the delinquency problem and the availability and use of service provision. The collection process should also be able to coordinate and augment existing data to facilitate specific administrative, planning, coordination, and evaluation decisions and activities relating to advanced phases in the planning process. *See* Standard 1.21; *see generally Report of the Task Force, supra* at Standards 1.2 and 25.4. In most cases, this data will not have to be collected in identifiable form. *See* Standard 1.52. The *Report of the Task Force, supra* points out that:

> There should be estimates of the number of youth who might fall into various target populations for primary, secondary, and tertiary prevention programs. Data should also yield information about the various decision points of the juvenile justice system. A flow chart of the juvenile justice system should be created and base rates calculated for each major decision point in the flow of cases through

the system. For example, there is a need for information about the arrest rates for various juvenile offenses and data about the numbers of youth who are diverted or who receive informal dispositions. *Report of the Task Force, supra* at Commentary to Standard 1.2.

The inventory of service resources should identify all the community groups and agencies impacting on youth. It should assist in the assignment of agency responsibility for various aspects of juvenile service provision and indicate areas of service duplication as well as areas for possible service coordination. *See* Standard 1.22; *see generally Report of the Task Force, supra* at Standard 1.5.

The listing of agencies should be sorted as to location, types of service provided, service delivery area, and intake criteria. For each program, there should be a brief description of the kind of services provided and the nature of client groups. There should also be information about referral resources and descriptions, if any. *Report of the Task Force, supra* at Standard 1.5.

The problem identification and analysis should utilize the data collection process to ascertain the number and problems of troubled youth as identified by the various components of the juvenile service system. Given the emphasis on juvenile justice and delinquency prevention, the statistical and resource information should provide the basis for the development of an accurate description of the delinquency problem at the local level. It should also provide a detailed description of the community's effectiveness in dealing with delinquency and other related juvenile problems, as well as identifying areas in need of change. These descriptions and analyses can provide the basis for setting goals and developing program strategy. *See* Standard 1.23; *see generally Report of the Task Force, supra* at Standards 1.3 and 26.1.

The statement of needs called for in paragraph (d) and described in more detail in Standard 1.24 should include an analysis of the interaction of the various components of the juvenile service system to address the problems identified. This will facilitate focusing on specific aspects of the juvenile service system important to the alleviation of particular problems. It should indicate the types of modifications and additions to the existing system necessary to deal more effectively with such problems. This identification of appropriate corrective measures should assist in resource allocation and the development of appropriate goals and program strategies. *See* Standard 1.25.

This analysis will help point out existing approaches to curbing juvenile delinquency in the community. Further, the analysis will help identify areas of needed change and can broaden the range of inputs into delinquency prevention and control system particularly inputs from service recipients. At the same time, the analysis can function as a method of conveying information from the juvenile justice system to the general community, thus creating feedback to make the system more responsive to community needs. *Report of the Task Force, supra* at Standard 26.1.

Once the present situation has been analyzed and the problems and needs identified, a statement of juvenile service system goals should be developed. The goals should express the desired outcome of specific system improvement actions that will be undertaken as a result of the gap which exists between the current situation and the desired situation. Since the goal statement should represent the desired condition of the juvenile service system at some point in the future, it should provide the focus for all subsequent planning activities and reflect the desires of the community. The statement should also be stated in a clear, measurable, and realistic manner to afford maximum guidance to the community. *See* Standard 1.25; *see generally Report of the Task Force, supra* at Standard 26.2.

The fifth component of the plan concerns the development of appropriate program strategies to facilitite goal attainment. Through the utilization of the local planning staff's expertise and the technical assistance of the state agency, the local planning unit should indicate the types and costs of necessary programs, policies, and system modifications necessary to meet annual planning goals. While this part of the planning process does not concern the specific design of the program to be implemented, it should be appraised in relation to the findings of the foregoing aspects of the planning process. There should be a clear relationship between the purpose of the recommended program strategies and the problem analysis and the annual goals of the plan. This will assist program design and implementation and the evaluation of the specific program as well as the local plan.

In the local juvenile service plan, information should be provided regarding why particular strategies were chosen, and the results of similar strategies adopted in other communities or the rationale for selecting an experimental program model. *See* Standard 1.26; *see generally Report of the Task Force, supra* at Standard 1.6.

While this standard recommends that the local planning authority should develop an annual plan, it does not prescribe a particular planning model. But in conjunction with the standards on planning in the 1.2 series, it identifies some of the basic concepts or components that should be incorporated into any model regardless of the structure and the sequence of the recommended planning steps. By incorporating these steps, the local juvenile service plan should provide the community with a clear understanding of its delinquency problem and outline a specific strategy or strategies to deal with the problem utilizing new and existing juvenile service system resources. It should clarify the roles of agencies, groups, and individuals with respect to how their contributions will benefit community endeavors.

Related Standards

1.111	Organization of the Local Juvenile Justice System
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.121	Organization of the State Juvenile Service System
1.122	Development of a State Juvenile Service Plan
1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
1.131	Organization and Coordination of the Federal Juvenile Service System

1.133 Allocation of Financial and Technical Resources
1.134 Evaluation of Federal, State, and Local Activities
1.21 Data Base Development and Collection
1.22 Inventory and Analysis of Community Resources
1.23 Problem Identification and Prioritization
1.24 Needs Identification
1.25 Goal Development
1.26 Strategy Development
1.27 Program Coordination
1.28 Program Development
1.29 Program Implementation
1.31 Development of an Evaluation System
1.32 Development of a Research Capability

1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines

Pursuant to the local juvenile service plan, the planning authority should facilitate the design, development, and coordination of appropriate programs, policies, and service system modifications. In conjunction with the state agency described in Standard 1.121, it should designate which local juvenile service agencies, organizations, and programs should be responsible for the provision of specific services and the methods of providing those services either through the development of new programs or the expansion, redirection, and/or coordination of existing programs.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 1.6, 2.1, 2.6, 2.8, 2.9, 26.4-5, and 27.1-4 (1976) [hereinafter cited as *Report of the Task Force*]; *Report of the White House Conference on Youth,* 722(a)-722(b) (1971); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 1.2 and 2.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard recommends that the local planning authority initiate the necessary actions to implement the goals and strategies resulting from the process outlined in Standard 1.112. The local authority, in its efforts to achieve the goals, should recognize the limitations of new financial and programmatic resources available from the state and federal governments, and identify the means for maintaining such resources through local funding mechanisms. Given these limitations, the local planning authority, in conjunction with the state agency described in Standard 1.121, should attempt, whenever feasible, to accomplish its objectives through the coordination and redirection of existing public and private juvenile justice and delinquency prevention services. Thus, the planning process provides the local community with the capability of assessing its juvenile service needs and the existing system's effectiveness in meeting those needs, of establishing goals and strategies to resolve the needs, and of making the juvenile service system adaptable and responsive to the local community concerns. Coordination suggests that policies of individual juvenile service agencies should be supportive and not contradictory, and that the participant services in the service delivery system should contribute to a common community purpose. Unfortunately, coordination is a deceptively simple concept and not easily achieved, because of the need to resolve conflicts in values and objectives, and to overcome the differences in perspectives among various agencies and professions. IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 1.2(a).

> . . . successful coordination requires a clear consensus about the goals of the organizations which are seeking to coordinate services; it demands a system of information interchange and clear definitions of the professional services offered by each agency; and it requires an agreed theory of how the several services and levels of government are and ought to be related to each other for the coordinated performance of services. IJA/ABA, *Planning for Juvenile Justice, supra* at 33-34.

None of the conditions suggested above can be realized without considerable investment of time, interagency cooperation, authority, and money. Due to these considerations, a local community must review coordination as an on-going process, achievable only at incremental levels over a period of time. The planning authority in conjunction with the state agency should carefully discern what levels of coordination are absolutely necessary to accomplish its goals, what are the most expedient yet realistic options available to implement the coordination activities, and what, if any, control is necessary to induce the affected agencies to comply with the planned process of coordination regarding budget, personnel, and/or rules and regulations. Three criteria have been suggested to determine whether coordination of services on a planned basis should be attempted:

i. Can it be shown that greater economies of scale will more than compensate for the costs of coordination efforts; or

ii. Can it be demonstrated that lack of coordination will result in inequitable distribution of services or resources to juveniles; or

iii. Is there a clear understanding existing among the agencies to be coordinated concerning the function to be coordinated, the means by which coordination is to take place, and the specific benefit to be realized by each agency and the client group? IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 1.2(b).

While coordination is a method of eliminating waste and inefficiency within the juvenile service system, the local authority should realize that in certain situations the duplication of services may be beneficial to the community and service system. Purposive duplication is often suggested as an alternative to planned coordination and utilized to achieve competition between two agencies and possibly improve the efficiency and productivity of each. It is also thought to be beneficial in servicing the needs of special groups, such as cultural or ethnic minorities, rural populations, or others whose needs are not met through the formal structure. IJA/ABA, *Planning for Juvenile Justice, supra* at 37.

If planned coordination cannot meet the goals delineated during the planning process, *see* Standards 1.112 and 1.122, consideration should be given to new program development. The program development process should identify the specific goals to be satisfied by the program, the target population to be served, the method to be used in servicing the population, cost of the method, alternative methods which have been considered, the assumptions upon which the selection of the method was based, and the means for measuring program effectiveness. Also, the agency responsible for implementation should be identified as well as other supporting agencies with which the program must operate. Finally, initial and continuing financial obligations should be explained to assure maintenance of the program, if successful within the community setting. *See generally Report of the Task Force, supra* at Standard 26.4.

Program implementation plans should be developed for all new programs and those resulting from planned coordination. Such plans should provide information to both the members of the local planning authority and the program managers concerning the necessary actions to initiate the program. The plans should specify how the program is to fit into the budgetary cycle of the organization responsible for the program funding, and the administrative procedures necessary to acquire and disburse the necessary funds.

Actions, resources and time necessary for selecting and training program staff, selecting and obtaining operating facilities, and for developing an information system to report regularly on the operations of the program and its impact should also be indicated. *See generally Report of the Task Force, supra* at Standard 26.5.

Related Standards

1.111	Organization of the Local Juvenile Justice System
1.112	Development of a Local Juvenile Service Plan
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.121	Organization of the State Juvenile Service System
1.122	Development of a State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
1.131	Organization and Coordination of the Federal Juvenile Service System
1.132	Development and Implemenation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Allocation of Financial and Technical Resources
1.134	Evaluation of Federal, State and Local Activities
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development
1.27	Program Coordination
1.28	Program Development
1.29	Program Implementation
1.31	Development of an Evaluation System

1.114 Evaluation and Modification of the Local-Level Juvenile Service System Program Efforts

The local planning and coordination authority in accordance with the local juvenile service plan and established standards and guidelines should evaluate, monitor, and, when necessary, recommend modification of:

- **a. New and expanded juvenile service programs, policies, and system changes resulting from the planning process;**
- **b. The existing local juvenile service system; and**
- **c. The local planning process.**

The evaluation and monitoring function should be conducted on a regular and ongoing basis by the local planning authority and the state agency described in Standard 1.121.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 1.7, 25.1, and 27.1-27.4 (1976) [hereinafter cited as *Report of the Task Force*]; *Report of the White House Conference on Youth*, 722(a)-722(b) (1971); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice*, Standard 2.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard recommends that the local planning authority assume an evaluation function to determine the quality of juvenile services being provided and to identify gaps in the kinds of services available. Since the local planning authority is the element of the planning process which is closest to those receiving services, it is the element best able to directly involve the juvenile services constituency in the planning process, to assess programs from the point of view of those directly affected, and to initiate and review proposals for change based on evaluation. In this regard the standard recommends that the local evaluation effort, on a regular and ongoing basis, should focus on three interrelated areas: new and expanded juvenile service projects, programs, policies, and system changes resulting from the planning process; the existing local juvenile service system; and the local planning process. *See generally Report of the Task Force, supra.*

Evaluation should be viewed as part of the ongoing planning process providing feedback in the aforementioned areas to enable the local planning authority to make adjustments to meet the needs of the existing system. In order to provide the local authority with the information necessary to ascertain whether a project's activities meet its announced goals, and what, if any, actions should be taken, adequate evaluation criteria should be incorporated at the initial stages of project development and utilized throughout the implementation of the project. This evaluation process, whether focusing on a new project, the existing system, or the local plan, is essentially the same in all cases. *See generally Report of the Task Force, supra* at Standard 1.7.

While the evaluation efforts of the local community primarily focus on the project level where resources are utilized to produce an endproduct or service, they also relate to the program level of which projects are components, and to the system level of which programs and the implementing agencies are the components. Each of the levels—project, program, and system—are progressively interrelated and contribute to the objectives of the successive level.

Since the planning activities of the state and federal governments deal primarily with programs and systems, they are dependent upon the evaluations at the project level to afford direction in the allocation of resources. *See generally* J.S. Wholey *et. al., Federal Evaluation Policy,* 24 (1971). Thus, without an evaluation function the other aspects of the planning process are hindered by lack of knowledge about the present state of either a specific project, a particular program, or the entire juvenile service system. *See generally* Law Enforcement Assistance Administration, Criminal Justice Planning Institute, *Training Manual*, 8-1, (draft, 1976) [hereinafter cited as CJPI, *Training Manual*].

While evaluation has many connotations, for the purposes of this and related standards it is defined in relation to two functions: performance monitoring and intensive evaluation. Performance monitoring primarily concerns the measurement of project activities. Intensive evaluation, on the other hand, encompasses the analysis of project results to determine if they were caused by project activities. Thus, projects have objectives which relate to implementation activities (e.g., to serve clients, to harden targets) that are assessed by performance monitoring; and objectives which relate to outcome (e.g., to reduce recidivism, to decrease the incidence of criminal activities) that are assessed by intensive evaluation. *See* CJPI, *Training Manual, supra* at 8-1.

While the purpose of an evaluation, as already indicated, is to ascertain the effects of a project against the goals it set out to accomplish, evaluation has occasionally been used for less legitimate reasons, such as postponing decisions concerning a project through a lengthy evaluation process; not assuming responsibility for difficult decisions concerning the direction of a project; attempting to cover project failures by avoiding objective appraisal; and fulfilling grant requirements as a ritual designed to placate the funding bodies. Because of such misuse, it is important that an evaluation indicate from the outset what types of information is expected from the assessment of a project, how it is to be utilized, who is to conduct it, the methods to be used, and when it is to be completed. In addition, the standard recommends that performance monitoring and intensive evaluation should be based on the objectives of the specific project, appropriate state and local standards and guidelines, and the systemwide goals of the local juvenile service plan. By utilizing these three criteria, a program can be assessed in relationship to the services it provides as well as its interrelationship with other programs that comprise the juvenile service system on the state and local levels. Such information should assist the project manager in providing the necessary evaluative information to the local planning authority to facilitate decisions concerning continuation, modification, and replication of a project or program. *See generally* H.C. Weiss, *Evaluation Research*, 17 (1972).

The audience for evaluation results can be divided into two major groups—project managers and policy makers. Performance monitoring which provides regular and rapid feedback is of primary use to the project manager. Policy makers, which include the local planning authority and the planning personnel, must make decisions about the development and funding of projects, and as a result, rely on both the data from the performance monitoring for immediate decisions relating to program continuation and results from intensive evaluation for long-range decisions relating to the allocation of resources for similar projects. *See Training Manual, supra* at 8-3. In addition, digests of the evaluation and monitoring reports should be made available to all interested groups and agencies providing or planning to provide similar services. Funds for the dissemination of the information should be part of the evaluation budget for each program or agency. *See Report of the Task Force, supra* at 73.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.125	Evaluation of Local and State Efforts
1.126	Office of Youth Advocate
1.31	Development of an Evaluation System

1.12 State-Level Participation

1.121 Organization of the State Juvenile Service System

The state government should establish an executive agency for juvenile justice and delinquency prevention with the responsibility for leadership and coordination of the local and state juvenile service system. The agency should be empowered to:

- **a. Plan, coordinate, and facilitate the implementation of all state juvenile services related to juvenile justice and delinquency prevention;**
- **b. Assist local agencies upon request to perform such services;**
- **c. Monitor all services provided directly by the state: and**
- **d. Advocate the development of supplemental services as necessary at the state and local levels.**

The planning, coordination, and implementation activities of the state agency should take into consideration the services provided by private groups and organizations and coordinate all services into an overall plan.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 2.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* 2.1 (A)-(C) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; A.F. Breed, *A Statewide Program for Children and Youth Services* (1967).

Commentary

This standard calls for the creation of an executive agency to serve as the focal point for the planning, development, and coordination of juvenile justice and delinquency prevention programs and services. The standard recommends that the state agency should have four major responsibilities. These responsibilities are described in greater detail in Standards 1.122-1.125.

Through the consolidation of state and local-level decision making, resource allocation, and policy analysis, the agency will be able to provide greater visibility to the numerous problems of troubled youth and to integrate the myriad of services now being offered to such juveniles by the various human service agencies within the state. Thus, the organizational structure recommended by this standard can increase the accountability of the juvenile service system to the local community and the legislature.

The centralization of the authority recommended in this standard is similar to the recommendations of other professional and national standards-setting groups. It differs, though, in advocating that such authority be separate from agencies responsible for direct service provision. However, it does not preclude the state agency's services from being incorporated into a more comprehensive planning and budget division, so long as it remains a distinct and identifiable component. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 2.1(A); *Report of the Task Force, supra* at Standard 2.3; and Breed, *supra* at 2 and 3. By separating the responsibility for youth related programs between planning and direct service agencies the standard recommends an organizational construct which would not necessitate complete reorganization of the state juvenile service system yet would provide sufficient authority to integrate services as needed to address the specific problems of juvenile delinquency and its prevention.

The recommendations of this standard parallel current trends to reorganize government at the state level in such a way as to reduce the proliferation of executive agencies and to recognize the commonalities among the existing providers of human services. Some states have adopted a comprehensive service agency, at least for delinquency related functions such as aftercare, probation, and correctional services. Others combine their youth services and juvenile corrections agencies into a human resources agencies department. Such efforts toward centralizing the administrative and supervisory services are often coupled with some form of substate regionalization for the provision of services. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra.* This standard does not recommend a specific statewide structure or method for service provision. However, it does propose an agency which could initiate changes, if necessary, to improve service provision.

A related concern is coordination with other agencies which are neither part of nor financed by the state juvenile service system. The recommended executive agency, in conjunction with local planning authorities, provides considerable opportunity for efficient interchange of information with these other agencies and for reaching agreement on the distribution of responsibilities for juvenile justice and delinquency prevention services. Such coordination can mean fewer sets of guidelines, fewer conditions, and simpler procedures for service provision. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra;* and *Report of the Task Force, supra* at Standard 2.3 and Commentary.

It is important to acknowledge the limitations as well as the capabilities of such an agency. The agency acts only as a general policy setting and supportive mechanism. It neither can nor should directly control decisions about individual youth and should be limited in its power to control either public and private service agencies or to enforce its decisions with respect to standards or the monitoring of agencies. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 2.1 (b). However, the state agency provides an appropriate mechanism for the concentration of resources to expedite activities beyond the scope of local authorities such as the development and implementation of standards, research, innovative services, and evaluation. If such responsibilities are decentralized, the quality of their performance can be expected to vary with the resources of the locality performing them. Finally, the agency being centralized should be more efficient in the collection, analysis, and dissemination of information and as a result have more impact on ideas throughout the state and even among the states. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 2.1(b).

The relationship between the state agency and local planning authorities is defined in Standards 1.111-1.114. Generally the state will provide assistance to local communities in initiating or staffing the planning authority mechanisms described in Standards 1.111-1.114. It should be responsible for coordinating and evaluating the local planning efforts to assure the equitable provision of services and distribution of state and federal resources throughout the state. *See* Standards 1.122 and 1.125.

Related Standards

1.111 Organization of the Local Juvenile Service System
1.112 Development of a Local Juvenile Service Plan
1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114 Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.124 Provision of Financial and Technical Resources
1.125 Evaluation of Local and State Efforts
1.126 Office of Youth Advocate
1.131 Organization and Coordination of the Federal Juvenile Service System
1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133 Allocation of Financial and Technical Resources
1.134 Evaluation of Federal, State, and Local Activities

1.122 Development of a State Juvenile Service Plan

The state agency, in conjunction with the local planning authorities, should develop a state juvenile service plan which addresses the problems and needs of all juveniles 0-18 years of age and encompasses problems of youth who are dependent, neglected, or abused, or who engage in delinquent conduct or noncriminal misbehavior. The state juvenile service plan should be developed on an annual basis and should designate needed financial resources and mechanisms for implementation, monitoring, and modification.

The process for development of the state plan should include the participation of youth, the policy-making officials of the major state juvenile service agencies, the executive management and budget agency, other governmental entities, citizen groups, businesses, and private nonprofit organizations providing services for juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 2.3, 2.7, and 25.1-25.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 1.1-1.3 and 2.1(A)-(C) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

This standard recommends that the state agency described in Standard 1.121, should develop a state juvenile service plan with the active participation of the local planning authorities. The plan should address the problems and needs of youth-provided services by the state-level juvenile service system and other local concerns which can be best addressed by state agencies. It should also integrate the local juvenile service plans into a cohesive state strategy to assure the equitable distribution of state and federal resources at the state and local level. This should not restrict the autonomy of the local planning authority. Rather, it is intended to optimize limited resource distribution and avoid unnecessary duplication and conflicting agency goals and responsibilities.

Formulation of the plan is recommended as a means for encouraging development of a cohesive and comprehensive juvenile service system which includes education, mental health, physical health, recreation, welfare, supervision, law enforcement, adjudication, employment, and housing components. The plan should cover both administration and service provision, and should be closely coordinated with the services provided by private agencies and organizations which utilize state and federal funds. The state agency should be responsible for providing necessary personnel and financial assistance to staff the local planning units, and coordinating local and state planning efforts.

The organizational structure chosen to implement the planning process should be consistent with the size and complexity of the state juvenile service system. Planning units could be operational at both the county and multi-county level, and provide for the acquisition, supervision, monitoring, and in some instances direct service provision according to the annual operational plan. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Standards 2.1(b), 2.2(c), and 2.4(b); *Report of the Task Force, supra* at Standards 2.3 and 2.7. *See also* Standard 4.11 and Commentary.

The second part of the standard recommends that state-level planning efforts should include the participation of the state and local service agency executives, political officials, service recipients, business and labor representatives, private citizens, and youth. Since juveniles are often not considered equals within the predominantly adult decision-making process because of limited expertise and experience, they should be given the necessary materials and training in such areas as group process, decision-making analysis of social systems, parliamentary procedure, research and evaluation techniques. *See generally Report of the Task Force, supra* at Commentary to Standard 2.7. Through the state-level planning process, the state agency should also supplement the role of the local community in assessing areas of need, in establishing appropriate strategies to meet such needs, and in recommending the utilization of federal and state resources available to the various state agencies.

> Capacity for action in any delinquency effort can be expected only after the parties exercising control over necessary resources have come to some agreement about plans of action. Advisory roles in themselves are not

> sufficient. Representation by private agencies should include the right to decide and act with the same authority as the public sector. Capacity to act requires that all of the significant players are involved in a meaningful way. *Report of the Task Force, supra* at Commentary to Standard 2.5.

The state agency should be empowered to integrate all youth services in accordance with the state plan to facilitate its implementation. In order to do this effectively, the agency should have the power to bring together various groups and organizations for the accomplishment of specific and agreed-upon objectives. It should have the authority of budget review, pursuant to the receipt and distribution of state and federal funds, by any agency group and/or organization. It should also be responsible for the approval of yearly program plans of state juvenile service agencies to assure compliance with the juvenile service plan. To encourage appropriate program development and improvements in services, the state agency should have the authority to exercise or recommend administrative controls to effect state plan compliance on the part of the participating groups, organizations, and agencies as well as have a strong program of financial and technical assistance to encourage and expedite compliance.

There are a number of government-level agencies and community groups that should be involved in coping with delinquency. Each of these groups holds resources, legal authority, expertise, and the political power necessary to support effective programming in the delinquency area. The state agency through its planning functions provides the mechanism to unite the local and federal resources in a systematic fashion for a comprehensive approach to delinquency prevention and control.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.121	Organization of the State Juvenile Service System
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.131	Organization and Coordination of the Federal Juvenile Service System
1.132	Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Allocation of Financial and Technical Resources
1.134	Evaluation of Federal, State, and Local Activities
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development

1.123 Development of State Standards and Guidelines

The state agency, in conjunction with the state and local planning process, should initiate:

- **a. A review of national standards for juvenile justice and delinquency prevention;**
- **b. The adoption, with or without modification, or development of appropriate standards to improve the state juvenile service system; and**
- **c. The development of necessary programs, guidelines, regulations, and legislation to facilitate statewide compliance with the state standards.**

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 2.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standard 2.1(b), (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard recommends that the state agency should assume the responsibility for the development of statewide standards and guidelines for juvenile justice and delinquency prevention.

The standards should address procedures, criteria, and techniques designed to improve the effectiveness and fairness of the juvenile justice system and delinquency prevention programs. They should be specific and quantifiable where possible.

Activities required to monitor, set standards, and develop innovative services require resource concentrations which exceed those that could be justified by regional or local agencies. Similarly these same functions employ large numbers of professionals, more readily available on a centralized basis. Were these responsibilities decentralized, the quality of their performance could be expected to vary with the resources of the locality performing them, and with the exception of a few very large urban areas, the quality could be expected to be uniformly lower than is possible through centralized activity. IJA/ABA, *Planning for Juvenile Justice, supra* at *Commentary* to Standard 2.1(b).

A centralized standards development effort also affords an opportunity to consider and draw generalizable conclusions from data concerning problems and needs of various groups of youth which are served by the juvenile service system throughout the state. It also permits the efficient dissemination of the standards to the local community for input and compliance monitoring. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra;* and *Report of the Task Force, supra.*

Paragraph (a) of the standard recommends that a review should be made of the national standards developed by the federal agency responsible for juvenile justice and delinquency prevention as well as standards developed by other national and state organizations. Related standards developed by other federal agencies and operational within the state should also be incorporated into the review to avoid conflicts in the policy and to clarify for redesign various agencies' roles and responsibilities.

Paragraph (b) suggests that the standards development process may result in either the adoption of existing federal standards, modification of those standards to fit the needs and problems of the state, or development of more detailed standards, address specific problems within the state and/or certain local communities.

Paragraph (c) recommends that the state agency should assure that appropriate guidelines, regulations and legislation to facilitate implementation of the standards be developed in conjunction with the planning units and affected services. The standards should be related to state and local goals and their achievement should make a contribution to goal achievement. The planning process at the state and local levels should indicate the nature of contribution the standards are expected to make. Since the standards are related to the planning process, implementation should be in accordance with the prioritization of the problems, needs, and goals established by the state and local communities. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra; Report of the Task Force, supra.*

Related Standards

1.111 Organization of the Local Juvenile Service System
1.112 Development of a Local Juvenile Service Plan

1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114 Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.121 Organization of the State Juvenile Service System
1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.124 Provision of Financial and Technical Resources
1.125 Evaluation of Local and State Efforts
1.126 Office of Youth Advocate
1.131 Organization and Coordination of the Federal Juvenile Service System
1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133 Distribution of Financial and Technical Resources
1.134 Evaluation of Federal, State, and Local Activities

1.124 Provision of Financial and Technical Resources

In order to facilitate juvenile service planning and program development at the state and local levels, the state agency should provide:

- **a. Personnel and/or necessary resources to staff state and local planning units;**
- **b. Subsidy funds for juvenile services;**
- **c. Training programs for juvenile service system professionals, paraprofessionals, volunteers, and other providing services to juveniles; and**
- **d. Funds for new and innovative programs to upgrade the effectiveness of the existing juvenile service system as well as for the assessment of such programs.**

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 2.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice*, Standard 2.1 (B) (1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard recommends that the state agency provide technical assistance and financial support to ensure that sufficient money and expertise are available to facilitate juvenile service planning and program development at the state and local levels.

Paragraph (a) recommends that the agency assume the responsibility of providing the personnel and/or necessary resources to enable the state and local communities to fulfill their planning and coordinating responsibilities. *See* Commentary to Standard 1.111.

The state agency should coordinate existing and appropriate state and federal technical assistance and develop additional such resources as necessary to provide consultation services. *See* Standard 1.133; *see generally Report of the Task Force, supra;* IJA/ABA, *Planning for Juvenile Justice, supra.* Consultation services should be provided to assist public and private agencies, institutions, and individuals as well as state and local planning entities in upgrading existing services and/or facilities and in designing and implementing new and expanded services.

Paragraph (b) recommends that the state agency coordinate and/or administer the distribution of all state and federal subsidies pertaining to juvenile justice and delinquency prevention. The agency should assure that these funds are used to supplement and increase but not supplant, to the extent feasible and practical, the available state, local and other nonfederal funds. All such funding should be in accordance with the planning efforts of the state and local communities and should be regarded as an adjunct to the implementation plans of the planning process and not the primary purpose of the planning process. In order to assure that such funding is necessary and is being used appropriately, the agency should have the authority to review the budgets of agencies which are recipients of such funds. *See* Standard 1.133; *see generally* IJA/ABA, *Planning for Juvenile Justice, supra. Report of the Task Force, supra* recommends a similar responsibility for the state as a method to effectuate coordination at the state and local levels.

> It should have the power of budget review, with the corresponding ability to receive and dispense funds. It should also be responsible for the approval of yearly operational plans of state youth services, financial assistance to units of local government engaged in prevention activities, standard setting for state and local programs, and program monitoring of all state-level services offered to youth. *Report of the Task Force, supra* at Commentary to Standard 2.3.

Paragraph (c) recommends that the state agency provide training programs for juvenile service system professionals, paraprofessionals, volunteers, and others connected with services for children and youth. This would include but not be limited to planning, administrative, correctional, and law enforcement personnel, teachers and other educational personnel, probation officers and other persons connected with the prevention and treatment of juvenile delinquency. The curriculum for the training should utilize an interdisciplinary approach with respect to prevention and control of delinquency and the diversion of youth from the juvenile justice system and other topics appropriate to the needs of the state and local communities. In carrying out its training function, the agency should coordinate the utilization of available federal, state and local funds, services, equipment, personnel, and facilities to develop and/or supplement the training capacity within the existing state and local juvenile service system. *See generally Report of the Task Force, supra;* IJA/ABA, *Planning for Juvenile Justice, supra. See also* Standards 1.421-1.429.

Paragraph (d) recommends that the state agency sponsor research and demonstration efforts to upgrade the effectiveness of the existing juvenile service system at all levels. Research should be directed at the development of new and innovative programs which show promise of making a contribution toward the prevention and treatment of delinquency as well as the assessment of such programs. The state academic community, as well as other public and private research agencies and appropriate individuals, should be involved in these developments and evaluation activities. *See* Standards 1.31 and 1.32. In conjunction with the federal agency, the state should disseminate the results of such research and demonstration activities as well as other pertinent data and studies to individuals, agencies, and organizations concerned with juvenile delinquency and its prevention and control. *See* Standard 1.133; *see generally Report of the Task Force, supra;* IJA/ABA, *Planning for Juvenile Justice, supra.*

Related Standards

1.111 Organization of the Local Juvenile Service System
1.112 Development of a Local Juvenile Service Plan
1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114 Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.121 Organization of the State Juvenile Service System
1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.125 Evaluation of Local and State Efforts
1.131 Organization and Coordination of the Federal Juvenile Service System
1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133 Allocation of Financial and Technical Resources
1.134 Evaluation of Federal, State, and Local Activities
1.421 Law Enforcement Personnel
1.422 Judicial Personnel
1.423 Prosecutorial Personnel
1.424 Legal Services Personnel
1.425 Personnel Providing Direct Services to Juveniles
1.426 Educational Personnel
1.427 Planning Personnel
1.428 Personnel Providing Support Services in Residential Programs
1.429 Administrative Personnel

1.125 Evaluation of Local and State Efforts

The state agency should develop an evaluation process to assess services provided by the state as well as state and local planning and coordination efforts. The process should focus on program administration, operation, compliance with standards and plans, and coordination of the state and local juvenile services and planning activities. Dissemination of information relating to the evaluation findings and appropriate recommendations should be made available to the respective planning units and service agencies for consideration and response. The state agency should be responsible for determining the adequacy of compliance with the recommendations and whether additional corrective measures are necessary.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 2.3, 25.1, and 27.1-27.4 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice*, Standards 2.1, 2.2, 4.2, and 4.3 (tentative draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

The state agency described in Standard 1.121 provides a mechanism for establishing, monitoring, and evaluating the quality of the state's juvenile services system. This standard provides for the development of a centralized evaluation process by that state agency. As with the development of standards and programs described in Standards 1.123 and 1.124, a successful evaluation program often requires greater concentration of professionals in a centralized agency rather than in several local agencies. A centralized state evaluation agency can utilize resources and disseminate results more efficiently than a decentralized system. The National Advisory Committee recognizes that a state agency has limited power to control and enforce decisions about individual juveniles and to effect the activities of local planning authorities. However, a centralized state mechanism for assessing the quality of local services would maximize the effectiveness of such services. A state agency must adhere to evaluative procedures which ensure accuracy and consistency in the collection and interpretation of data. In this respect, a centralized agency's impact on the improvement of juvenile services will be more significant than the impact of a decentralized system of evaluation. *See generally* Kobetz and Bosarge, *supra* at 60-64.

This standard also recommends that the state agency develop an evaluation process which can assess not only individual state and local juvenile service programs, but also state and local program planning and coordination efforts. As with local evaluation efforts, the state agency should utilize both "performance monitoring" techniques which evaluate project activities and "intensive evaluation" techniques which measure a particular project's results. *See* Standard 1.114. To be comprehensive, the state agency's evaluation effort should assess all state and local-level juvenile service projects, programs, and service systems. Evaluation should focus on the objectives of the specific projects, on state and local standards and guidelines, and on systemwide efforts to coordinate juvenile service plans. *See generally Report of the Task Force, supra* at Standard 25.1 and Commentary. Evaluation "must transcend individual agency needs and relate to . . . systemwide concerns." *Id.*

The standard also recommends that the state agency assist local evaluative efforts which involve federal or state funded services. In determining whether a federal or state program should be transferred to another locality within a state, the state agency should use the most stringent evaluative techniques to assure impartiality and accuracy in the methods used and results obtained.

Coordination of planning, funding, and evaluation should occur at both the state and local level. State agency procedures should encourage and monitor compliance with recommendations that arise from the evaluation process. However, this standard permits program representatives to respond to the results and recommendations of any state agency evaluation. In this way, officials of public and private juvenile service agencies may respond to evaluation results offering their operations and the existing juvenile service system. *See generally Report of the Task Force, supra* at Standard 25.1. In some cases, such feedback from program representatives may alter and correct final evaluation results and recommendations. In all cases, this opportunity to respond should meaningfully involve program officials in the evaluation process, thus engendering their involvement and cooperation in carrying out the ultimate recommendations of the statewide agency.

While development of an evaluative process is encouraged by this standard, a *specific* mechanism is not mandated. States should mandate this evaluation process by statute. *See Report of the Task Force, supra* at Standard 25.1 and Commentary. This standard leaves to the states determination of the appropriate division of operations between the state and local agencies involved. The state agency, in conjunction with local planning authorities, should allocate a specific percentage of financial and technical resources for the evaluation process, and should provide a mechanism for the distribution of such resources. *Cf. Report of the Task Force,* Standard 2.3 and Commentary.

The state agency should seek out local planning authorities and state advisory committees in order to involve all members of affected state, local, public and private groups, and interested private citizens, in decision making regarding the evaluation process.

Related Standards

1.114 Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.134 Evaluation of Federal, State, and Local Activities
1.21 Data Base Development and Collection
1.22 Inventory and Analysis of Community Resources
1.23 Problem Identification and Prioritization
1.24 Needs Identification
1.25 Goal Development
1.26 Strategy Development
1.27 Program Coordination
1.28 Program Development
1.29 Program Implementation
1.31 Development of an Evaluation System
1.32 Development of a Research Capability
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.56 Destruction of Records

1.126 Office of Youth Advocate

The state government should establish an executive office of youth advocate with the responsibility for investigating and reporting misfeasance and malfeasance within the juvenile service system, inquiring into areas of concern, and conducting periodic audits of the juvenile service system to ascertain its effectiveness and compliance with established responsibilities.

The office of the youth advocate should have the authority to:

a. Examine all records pertaining to the juvenile service system;
b. Subpoena witnesses and hold public hearings;
c. Issue reports to the governor, legislature, family court, and the director of the agency under consideration;
d. Recommend revocation of federal and state funding and/or state certification;
e. Initiate legal action to obtain compliance with the recommendations; and
f. Publish its findings and recommendations on an annual basis for the general public.

The authority of the agency should extend over all juvenile services receiving state and/or federal funding.

Source:

See generally White House Conference on Children, *Report to the President* (1970) [hereinafter cited as *Report to the President*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 2.3 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard recommends that the state government establish a single executive Office of Youth Advocacy. Although some programs currently function as youth advocates, the range of services is too scattered and random to effectively meet the special needs of youth. *See generally Report to the President, supra* at 389-397 (1970); and *Report of the Task Force, supra.*

Several biases have been observed in present youth advocacy programs, and such programs as presently constituted have been charged with creating more disarray than responses to problems in the juvenile service system. *See Report to the President, supra.* The biases that have been noted are (1) present youth advocacy agencies tend to emphasize *program description* rather than program implementation and evaluation, and as a result there are more "paper programs" than actual ones; (2) such agencies are usually dominated by one particular profession, the concerns of which are often more "territorially dominated" than youth oriented; and (3) such agencies often over diagnose and over classify youth as a method for excluding them from particular services. *See Report to the President, supra* at 390.

By establishing a single youth advocate office, this standard could ensure the setting of standards and specific goals to be achieved by the state's juvenile service system. The goals of such an office should include (1) ensuring a proper and nourishing environment for children; (2) strengthening the family by unifying a community's social services; (3) improving and strengthening child and family services; (4) providing basic services to individual youth in need of such services; and (5) working for legislation, judicial, and administrative change to improve the system. *See Report to the President, supra* at 390. *See also* R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 450 (International Association of Chiefs of Police, 1973). Each of these five goals could be furthered by an Office of Youth Advocacy.

The Office would be principally responsible for serving as a centralized advocate for youth to maximize services through existing community-based facilities. *See Report of the Task Force, supra* at Standard 2.3. In addition to remedying current biases in the juvenile service system and setting more relevant goals for these systems, an Office of Youth Advocacy could remedy the lack of accountability now evident in the scattered agencies. *See Report to the President, supra* at 390. These agencies currently lack accountability to the very persons they were set up to serve—juveniles. All youth, in part because of the legal incapacities imposed by their status as children, require skilled and conscienctious advocates. By empowering the Office of Youth Advocacy with the ability to initiate legal action, hold hearings, publish findings, etc., this standard attempts to ensure that children and their special concerns will not be forgotten by the community or the legislature. *See Report of the Task Force, supra* at Commentary to Standard 2.3. The present lack of accountability to the community would be diminished because the Office of Youth Advocacy would be directly accountable to the governor of the state. *See Report of the Task Force, supra* at Commentary to Standard 2.3.

This standard gives the Office of Youth Advocacy authority to examine all juvenile records, to subpoena witnesses, and to hold public hearings. *See* paragraphs (a) and (b) of this standard. This authority will enable the office freely to probe allegations of deficiencies and illegality within the juvenile service system, and should minimize the ability of agencies to impede the investigation of complaints. Consistent with the authority conveyed in paragraphs (a) and (b) of this standard, the office should be responsible for knowing the functions of all relevant state agencies to reveal areas in which such agencies inadequately serve juveniles and to work for improvements. *Accord, Report to the President, supra* at 392.

This standard also gives the Office of Youth Advocacy the prerogative to recommend revocation of program funding or certification. *See* paragraph (d). In so doing, this standard greatly bolsters the office's ability to carry out the continued improvement of a state's juvenile service system, and in turn to remain a strong advocate for children. *See Report of the Task Force, supra* at Standard 2.3 and Commentary; *see also Report to the President, supra* at 392. This ability to recommend elimination of funding, supplemented by the ability to bring lawsuits, gives the Office of Youth Advocacy a unique capacity and potency to act quickly to remedy urgent and profound conditions which disserve juveniles and which abridge the letter or spirit of the law.

Related Standards

1.121 Organization of the State Juvenile Service System
4.82 Ombudsmen Programs

1.13 Federal-Level Participation

1.131 Organization and Coordination of the Federal Juvenile Service System

The Federal Government, through an executive agency responsible for juvenile justice and delinquency prevention, should:

- **a. Plan, organize, and coordinate all juvenile services relating to juvenile justice and delinquency prevention at the federal level; and**
- **b. Coordinate all federal funds in direct support for juvenile justice and delinquency prevention.**

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 2.4, 2.5, 2.8, and 2.9 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 1.2 and 4.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; *Report of the White House Conference on Youth,* 7.22a (2) and 7.23a (1971).

Commentary

This standard recommends that the Federal Government should establish an executive agency responsible for providing the leadership, coordination and resources necessary to increase the capacity of state and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention programs, research, evaluation, and training services.

The current fragmentation of the juvenile service system and the proliferation of agencies responsible for portions of services delivered to juveniles and their families is often the result of attempts by states and local communities to meet the requirements of the many varied federal programs. It is this resultant tangle of state and local agencies, boards, and offices with overlapping responsibilities and inconsistent policies for care and treatment of children which necessitates consolidation of the federal funding process and reduction of federal organizational fragmentation. *See generally Report of the Task Force, supra* at Commentary to Standard 2.4; IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 4.1 (e).

The Federal Government has largely relied on a variety of antipoverty, social and welfare, education, and employment programs to help improve and upgrade the standard of living, and at the same time hopefully attack the root causes of juvenile delinquency.

Specific efforts to address the juvenile delinquency problem have been limited to either planning and funding programs outside the justice system or programs within the justice system. They have not been used in conjunction with each other because of the legislation of the federal agencies involved. No effective mechanism has been developed for planning and funding programs and projects across functional lines. General Accounting Office, *How Federal Efforts to Coordinate Programs to Mitigate Juvenile Delinquency Proved Ineffective,* 51 (1975).

The federal agency should provide leadership to facilitate efforts of the intergovernmental structures at the state and local level recommended in Standards 1.111 and 1.121. To accomplish these objectives the federal agency should have the authority to coordinate both existing services and funds provided by other federal agencies which directly affect the prevention and control of juvenile delinquency.

Paragraph (a) of the standard concerns the first of these coordination responsibilities. In order to plan, organize, and coordinate existing federal juvenile justice and delinquency prevention services, the federal agency should develop criteria for defining the characteristics of juvenile delinquency and its prevention, the diverting of youth from the juvenile justice system, and the training, treating, and rehabilitating of juvenile delinquents. Utilizing these criteria, relevant federal programs and agencies should be identified and, following an analysis of the programs' relevancy to impact on delinquency, a comprehensive plan covering these programs should be developed by the federal agency. The plan should indicate modifications in the programs' organization, management, personnel standards, budget requests, and methods of implementation which would facilitate coordination and resource concentration at the local and state level. All federal officials who exercise significant decision-making authority within the aforementioned agencies and programs should advise and assist the federal agency in the coordination of overall policy and development of objectives and priorities of all federal juvenile delinquency initiatives.

However, the strategy to organize and coordinate federal agencies, and as a result to concentrate federal resources, proposed in paragraph (a) recognizes that most of the decisions affecting the allocation of funds provided by federal programs are made at the state and local levels. Accordingly, the standard, together with Standards 1.111 and 1.121, recommends an integrated federal, state, and local approach. The Federal Government provides leadership and assistance to state and local agencies where the problems are most immediate and decisions are made.

This leadership can be exercised not only by setting policy and priorities, but also by removing obstacles to more effective concentration and coordination of federal programs at the point of service delivery. Certain federal regulations, for example, are designed to assure compliance with legislative intent at the operating level. Some regulations may at the same time stand in the way of a community's creative use of program funds toward the achievement of program purposes. When this is the case, the regulatory requirements should be considered on a cost-benefit basis and, when appropriate, relaxed in a way to permit local program development while maintaining accountability and protecting against abuse. The federal agency, in conjunction with the other affected federal agencies, should develop an appropriate mechanism to respond to such requests from state and local communities.

The feedback from the specific efforts should provide the federal agencies with a solid basis for recommending and implementing changes in their programs, guidelines, regulations, and/or legislation. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 4.1(b).

This standard's recommendation for an executive agency is in accordance with the dictates of the Juvenile Justice and Delinquency Prevention Act of 1974 [hereinafter cited as JJDP]. The law created the Office of Juvenile Justice and Delinquency Prevention to identify existing and needed resources, identify and set priorities, and develop strategies to implement a comprehensive effort to both prevent and control juvenile delinquency and improve the Federal Government's coordination of such efforts. It also provides for ongoing research, training, and the distribution of information on delinquency.

The role of the Federal Government outlined in this standard also parallels the recommendation of other standard-setting groups. In most instances, such groups recommend that the Federal Government concern itself less with the direct provision of services and more with the development of institutions to provide services through state and local government. Thus, the emphasis recommended by such groups is that the Federal Government, through an appropriate executive agency, assist states and localities to improve their capacity to plan and manage the social services appropriate for reducing delinquency. *See Report of the Task Force, supra* at Commentary to Standard 2.4.

> Federal juvenile justice policy should encourage the reduction of the number of agencies in each jurisdiction, innovation in services and organizational structure, and new approaches to decision making. Federal funding for juvenile justice should be allocated in such a way to give incentives to states, localities and private agencies to pursue these purposes. *See* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 4.1(e).

In addition to ending the tendency for federal funding to proliferate conflicting agencies in the state juvenile justice system, a single federal juvenile justice agency should also provide a greater impact on the content and quality of direct services to juveniles than is possible under the present approach.

Paragraph (b) of this standard addresses the second coordination responsibility noted earlier. It recommends that the federal agency administer and distribute all federal funds in direct support of juvenile justice and delinquency prevention and coordinate all other federal funds directly related to the same in accordance with the aforementioned strategy. Through the coordination of the federal funding mechanism, the federal agency can effect similar coordination at the state and local levels, thereby facilitating the concentration of resources at those levels. The structure of federal grant programs has been shown to have a major influence on the structure of state government. Both inside the juvenile justice system, and more generally throughout the range of public services, states tend to organize the supervision of their service-delivery systems to reflect—at least in form—the guidelines of federal programs. *See* IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 4.10.

> At present, it is clear that because of the large number of agencies giving money for children's services, and because of the relatively small amount each federal agency is able to spend on juvenile justice services, it is difficult for any federal guidelines to insure that funding has had any impact on services. IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 4.10.

The federal agency should provide or assure that an organizational structure exists through which federal resources can be made available to states and local communities in sufficient amounts to meet local needs. The distribution of federal resources should be in the form of block and formula grant allocations. The allocations should be determined on the basis of demographic characteristics associated with delinquency. *See Report of the Task Force, supra* at Commentary to Standard 2.8. Insofar as possible, guidelines for federal grant programs should communicate as directly as possible the original intent of the enabling legislation with as few restrictions on the recipients as possible. This should enable the funding mechanisms to respond to variations in state and local-level characteristics and integrate the federal funding process into the state and local organizational model provided through Standards 1.111-1.125. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 4.1(i).

> Federal funds must be the main source of money. The responsibility, however, for generating and running these programs must lie with the communities. Once again, funding agencies must broaden the categories of programs considered for support . . . By striking a new balance between those agencies charged with viewing the juvenile from the system's vantage point, and those other agencies charged with viewing the system from the juveniles' vantage point, we can conceivably channel some funds from one side to the other. *Report of the White House Conference on Youth supra* at Resolution 7.23(a).

In addition to its role as a source of funding and the principal mechanism to affect federal-level coordination and concentration of resources, the federal agency should also be responsible for advancing the state of knowledge in JJDP through standards, basic research, training, technical assistance, monitoring, and evaluation. *See* Standards 1.132-1.134. The incorporation of a national institute as established in the JJDP Act of 1974 should provide valuable information into the nature of human problems and methods for their alleviation. *See Report of the Task Force, supra* at Standard 2.4; and IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 4.1(c).

Related Standards

1.111	Organization of the Local Juvenile Service System
1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.121	Organization of the State Juvenile Service System
1.122	Development of a State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
1.132	Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Allocation of Financial and Technical Resources
1.134	Evaluation of Federal, State, and Local Activities

1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards

The federal agency should develop national standards for juvenile justice and delinquency prevention through which national goals, priorities and concerns should be stated. The agency should provide the necessary resources to assist in the review of the national standards and the development of state and local standards.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force for Juvenile Justice and Delinquency Prevention,* Standards 2.4, 2.8, and 2.9 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standard 4.1 (tentative, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; *Report of the White House Conference on Youth,* 772a(2), 772b, and 723a (1971).

Commentary

This standard recommends that the federal agency assume responsibility for the development and recommendation of juvenile justice and delinquency prevention standards and the means for facilitating their review and implementation by federal agencies, states, and local communities. The standards should represent the national goals, priorities, and concerns related to juvenile justice and delinquency prevention. They should provide both the means for assessing the existing methods of juvenile service provision at all levels of government, and direction on how best to plan and manage services that encourage law-abiding conduct and reduce the incidence of delinquency. *See generally Report of the Task Force, supra* at 104. However, the standards cannot realistically be expected to anticipate the needs, structure, and particular priorities of each state and local community. As a result, the states and local communities should have the opportunity to select those standards which best address their unique needs. The opportunity to modify the national standards or to utilize the standards of other national groups is recommended as a method to provide a variety of solutions to deal with the diversity of problems and needs. *See generally Report of the Task Force, supra; see also* Advisory Committee on Standards for Juvenile Justice and Delinquency Prevention, *General Implementation Plan* (September 1976). Review of the national standards and the subsequent development of statewide standards should be a joint process on the part of the state agency and local planning authorities. The state agency should provide a mechanism to assure such collaboration in the entire standards development process.

To facilitate the review, development, prioritization, and implementation of state and local standards, the federal agency should utilize its resources such as the provision of incentives, technical assistance, research, evaluation, and coordination of related juvenile service resources provided by other federal agencies. *See generally Report of the Task Force, supra* at Commentaries to Standards 2.4, 2.8, and 2.9. The agency should utilize its funding capability to provide the state with a means to initiate the standards review and development process. It should also provide monies for the exploration, development, and evaluation of various approaches, techniques, and models proposed in the standards. Technical assistance should be provided to governmental and private agencies in compliance with or in the process of complying with the standards in order to provide information, training, skills, planning, guidance, and other nonfederal aid. Research and resources should also be employed to compare present state and local practices and policies with those suggested by the standards, to explore and demonstrate various implementation strategies, and to determine the effect of compliance with various standards in local and state settings. Coordination efforts should be initiated to encourage federal agencies supporting juvenile justice and delinquency prevention services to utilize appropriate standards or selected concepts contained in the standards in their respective funding guidelines. Finally, the federal agency should disseminate the standards and information concerning them through public hearings, speeches, and seminars to encourage public debate and comment.

Related Standards

1.112 Development of a Local Juvenile Service Plan
1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114 Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.121 Organization of the State Juvenile Service System
1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.125 Evaluation of Local and State Efforts
1.131 Organization and Coordination of the Federal Juvenile Service System
1.133 Allocation of Financial and Technical Resources
1.134 Evaluation of Federal, State, and Local Activities

1.133 Allocation of Financial and Technical Resources

In order to facilitate juvenile justice and delinquency prevention planning, coordination, and program development, the federal agency should provide appropriate resources and direction to initiate and maintain coordination among federal programs and services relating to juvenile justice and delinquency prevention; support demonstration, research, and evaluation programs; and establish and improve mechanisms for collecting and disseminating information concerning theories, successful programs, and improved methods of program development and administration. In addition, the federal agency should assist states and local communities through the provision of technical assistance and specialized training opportunities designed to improve juvenile justice and delinquency prevention services, and allocation of federal funds appropriated for the support of state and local juvenile justice and delinquency prevention efforts.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals *Report of the Task Force on Juvenile Justice and Delinquency,* Standards 2.4, 2.8, and 2.9 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standard 4.1 (tentative draft, 1977) [herinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; *Report of the White House Conference on Youth,* 7.22a(2) and 7.23(a) (1971).

Commentary

Recognizing that the Federal Government has played a major role in guiding and subsidizing the efforts of the states and local communities to improve the quantity and quality of human services, this standard recommends that the allocation of specific federal resources pertaining to juvenile justice and delinquency prevention be the responsibility of the federal agency identified in Standard 1.131.

The structure of federal funding programs has been shown to have major influences on the structure of state government. Generally, throughout the range of public services, states tend to organize the supervision of their service delivery systems to reflect—at least in form—the guidelines of federal programs. This is particularly the case with respect to juvenile service programs. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at 98.

Unfortunately the conflicting goals and guidelines of these programs have tended to fragment the system, generate a great deal of organizational instability, and, in some instances, produce inequities in services to juveniles. It is clear that these confusions and inequities result largely from the involvement of a multiplicity of federal departments, agencies, and programs in the effort to improve the quality of services to juveniles, and from the resulting proliferation of service providers and regulations. In light of the power of federal programs to influence that structure of state government, it is most unlikely that more coordinated and internally consistent juvenile service systems can emerge in the states until the Federal Government ends the fragmentation of juvenile service resource allocation. In addition to encouraging more unified state juvenile service systems, a single federal agency could have greater impact on the content and quality of direct services to juveniles than is possible under the current uncoordinated approach. Thus, this standard recommends that the federal agency have the authority to reduce the organizational fragmentation and to provide the states and local communities with the concentrated resources necessary to innovate new services, organizational arrangements, and decision-making processes. *See* IJA/ABA, *Planning for Juvenile Justice, supra* at 98-100.

The standard also recommends that the federal agency provide technical assistance and consultation to the states and local communities. The assistance should focus on the collection and dissemination of information about ideas and theories; successful programs, and improved methods of program development and administration. The scope of the federal agency enables it to disseminate knowledge and information that would otherwise be lost because of the unorganized and erratic flow of information between states and local communities regarding juvenile service provision. The technical assistance should utilize experts in various program areas to assist states and local communities with various aspects of program development, implementation, and coordination. It should utilize the latest technology to collect and distribute information on theories, ideas, and programs as well as provide specialized training opportunities where information, skills, and techniques can be shared. *See Report of the Task Force, supra* at 62.

One of the most critical roles of the federal agency would be the provision of support for research and evaluation. Through the provision of such support, programs can be designed which are based on theory and knowledge that have been strenuously tested and reviewed by independent researchers and practitioners. Technical assistance and consultation should be offered to state and local units of governments which want to develop their own research capacities. There should also be methods and procedures for training based on the findings of the research and evaluation efforts as well as methods for the dissemination of information to the general public. *See generally Report of the Task Force, supra* at 62.

In sum, it is the view of the National Advisory Committee that the Federal Government can best assist in improving juvenile justice and delinquency prevention by concerning itself less with the direct provision of services and more with the development of an organizational process at the state and local level and the provision of necessary financial and other resources.

Related Etandards

1.111 Organization of the Local Juvenile Service System
1.112 Development of a Local Juvenile Service Plan
1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.121 Organization of the State Juvenile Service System
1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.124 Provision of Financial and Technical Resources
1.131 Organization and Coordination of the Federal Juvenile Service System
1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.134 Evaluation of Federal, State, and Local Activities

1.134 Evaluation of Federal, State, and Local Activities

The federal agency should develop and implement on a regular and ongoing basis, an evaluation of juvenile justice and delinquency prevention activities at the federal, state, and local levels to determine the effect of national and state standards and plans.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 1.7, 2.4, and 27.1-27.4 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice*, Standard 4.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; *Report of the White House Conference on Youth*, 7.22a(2) and 7.23 (1971).

Commentary

In addition to its role as a source of funding for innovations in juvenile justice and delinquency prevention, the federal agency is also responsible for the development of new concepts through basic research and through the process of evaluating new and existing service provision efforts. If programs are to be based on theory and knowledge that have been strenuously tested, then the Federal Government must insist that a significant proportion of all juvenile justice and delinquency prevention funds be committed to monitoring and evaluation at all levels of program development. Accordingly, this standard recommends that the federal agency directly monitor and evaluate—on a selected basis—federal, state, and local juvenile justice and delinquency prevention services which are of particular significance. The agency should also provide and encourage related federal agencies to provide the necessary financial and technical resources to states and local communities for the assessment of other types of significant juvenile services. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra; Report of the Task Force, supra* at 109.

The information and knowledge from the monitoring and evaluation efforts concerning ideas, theories, successful programs, and improved methods of program development and administration should be collected, assessed, and disseminated through the technical assistance function of the federal agency described in Standard 1.133. Otherwise the knowledge will be lost due to the unorganized and erratic flow of information between and within states, counties, and regions. *See generally Report of the Task Force, supra* at 108.

While the role of the federal agency as indicated in this standard is to support research and evaluation in order to expand the base of knowledge about delinquency and the methods for its prevention, it is also responsible for providing resources for program development based on that knowledge. Unfortunately, research, evaluation, and program development functions have more often been regarded as separate and distinct functions than coordinated and integrated into a joint planning venture. This separation has often contributed to the failure of each.

> Why do we find ourselves in danger of repeating old errors? There are a host of reasons but for most it is our failure to gather knowledge on the effects of our innovations—to submit our programs to vigorous study and evaluation. Such a failure would be unthinkable in the field of medical care or even in manufacturing industries, yet it has traditionally gone unquestioned in the social realm. Furthermore much of our failure is also due to the inability of scientific and program people to collaborate successfully in the search for knowledge even though they have much to contribute to each other. L.T. Empey, *A Model for Evaluation of Programs in Juvenile Justice*, 1 (1977).

Thus, the federal agency, to avoid the error of assuming that change can be equated with effectiveness and that new programs will succeed where others have failed, should initiate and encourage other federal agencies, states, and local communities to initiate collaboration between the research, evaluation, and program development functions. In initiating such collaboration, certain elements must be jointly addressed by the various functions. For example, there must be an agreement on project goals, a definition of the target population, a theoretical statement of the problem, the development of an intervention strategy, and finally, an assessment of implications once the program and research have been completed. Collaborative efforts containing these elements should provide information on how to better organize new action-research programs and to provide a means of assessing whether potential programs show promise. *See* Empey, *supra* at 14.

Related Standards

1.111 Organization of the Local Juvenile Service System
1.112 Development of a Local Juvenile Service Plan
1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114 Evaluation and Modification of the Local Juvenile Justice Service System Program Efforts
1.121 Organization of the State Juvenile Service System
1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.124 Provision of Financial and Technical Resources
1.125 Evaluation of Local and State Efforts
1.131 Organization and Coordination of the Federal Juvenile Service System
1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133 Allocation of Financial and Technical Resources
1.134 Evaluation of Federal, State, and Local Activities

1.2 Planning

1.21 Data Base Development and Collection

The local planning authorities in conjunction with the state agency should develop and maintain a data collection process to facilitate the planning and evaluation of juvenile justice and delinquency prevention services. The collection process should coordinate with and augment state and local information services available through the major juvenile service agencies. Classification of the information should be according to four areas: prevention, law enforcement, adjudication, and supervision. The information should be objective and current and should include budget data to facilitate cost effectiveness estimates.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Justice and Delinquency Prevention,* Standards 1.2, 25.4, and 26.1 (1976) [hereinafter cited as *Report of the Task Force*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

This standard and subsequent Standards 1.22 through 1.29 delineate a series of steps by which states and localities, using the organizational structure set out in Standards 1.111-1.114 and 1.121-1.126, can plan and implement an effective and responsive juvenile justice service system. The planning process described in Standards 1.21-1.29 is comprehensive and largely sequential. The steps enumerated first ideally should be carried out first since they provide facts or value judgements which are prerequisite to later steps in the planning process. In a nutshell, the planning process proposed is the following. First this standard requires that an adequate uniformly classified data base must be developed. Standard 1.22 requires that all existing state and local juvenile justice services must be inventoried, analyzed, and initially assessed for effectiveness. Next, Standard 1.23 recommends that state and local problems in the juvenile justice area should be identified, both by their character and by their relative importance. The needs of the system should then be identified. (Standard 1.24.) Fundamental systemic goals and specific preventive or corrective strategies to meet those goals should be developed. (Standards 1.25 and 1.26.) Finally, specific programs which are consistent with the strategies adopted should be developed and implemented. (Standards 1.28 and 1.29.) All of these recommended planning steps should be carried out cooperatively by local planning authorities together with the state agency recommended in Standard 1.121 to enhance coordination, continuity, and cohesiveness within the statewide juvenile service system. (Standard 1.27.) *See also* Standards 1.22-1.26 and 1.28-1.29.

This standard recommends that a data collection process be developed in order to ease the planning and evaluation functions of juvenile justice and delinquency prevention services. "Planning and evaluation cannot take place without adequate data." *See Report of the Task Force, supra* at Standard 25.4. This standard calls for the development of a joint collection process between local planning authorities and the state agency. It also specifies the types of data that should be obtained.

Although good data collection entails substantial time and money, *see Report of the Task Force, supra* at Commentary to Standard 26.1, only good data can accurately identify what parts of a juvenile service system are working well. Coordinated efforts by local and state agencies are necessary to ensure adequate bases and reliable data for juvenile service systems. The need for adequate data bases has been noted in several prior national studies. *See, e.g.,* President's Commission on Law Enforcement and the Administration of Justice; White House Conference on Children, *Report to the President* (1970); President's Commission on the Causes and Prevention of Violence, and Joint Commission on the Mental Health of Children. Sound data will assist planners in setting priorities for existing and proposed programs in the juvenile service system. *See* Kobetz and Bosarge, *supra* at 21-22.

The need for the local planning authorities and the state agency to develop and maintain an efficient collection process is apparent. If the two groups conduct their own collection processes, the variation in data quality will be pronounced. "Comparisons between areas may be distorted simply because recordkeeping is more detailed and sophisticated in cities than in rural areas." Kobetz and Bosarge, *supra* at 20.

Current data collection processes are inadequate for a number of reasons. One problem is that information collected by different juvenile service and other agencies typically has

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not been shared. *See Report of the Task Force, supra* at Commentary to Standard 1.2. Thus, the planning and evaluation personnel involved in juvenile services "may seriously misjudge the extent of the community's delinquency problem." *Id.* Another problem is that much of the information persently collected does not focus on prevention and is therefore meaningless to many planners in the juvenile services system. The net result of current collection processes is that program planning may be premised on false assumptions. *Id.*

Data collection should be limited to the purposes such information is to serve. The IJA/ABA Joint Commission sets out four purposes that have been derived nationally from the overall goal of providing services to juveniles. These purposes are: (1) to make lawful decisions; (2) to enhance provision of services to juveniles; (3) to improve the delivery of services by evaluating the agency; and (4) to facilitate approved research. Information collected that does not relate to specific purposes will be haphazardly collected and is unlikely to be used. S. Wheeler, *On Record* (1969).

In recommending that local planning authorities and state agencies jointly develop and maintain a data collection process, this standard encourages the sharing of necessary planning and prevention information by all planning authorities involved. This standard should also aid state agencies in focusing on prevention planning by providing accurate information on total delinquent populations.

The information collected by local planning authorities in conjunction with the state agency, and the data base developed by such a coordinated process, should include all major juvenile service system agencies in the state. This coordinated data collection process is not meant to supplant the police or court's data collection systems, but rather to provide systemwide coordination and a more complete, reliable, and effective data base. *See Report of the Task Force, supra* at Standard 1.2.

The classification system set up by this standard would also facilitate the development and collection of a valid and useful data base by creating clear distinctions among the types of information received. Classification into the distinct divisions of prevention, law enforcement, adjudication, and supervision will enable planners in each area to obtain comprehensive and valid information in specific areas for specific purposes.

A common practice of agencies has been to overcollect information to insure "perfect" decisions. *See* IJA/ABA, *Planning for Juvenile Justice*, Standard 3.1 and Commentary. Often "decision makers think the more information the better their decisions." Bartlett and Green, "Clinical Prediction: Does One Sometimes Know Too Much?" 13 J. Counseling Psych 267 (1966). However, the classification system set up by this standard will insure that "organizations . . . record only information that has a clear-cut relevance to its concerns." *See generally* U.S. Department of Health, Education, and Welfare, Report of Secretary's Advisory Committee on Automated Personal Data Systems, *Computers and The Rights of Citizens*, 6 (1973). The National Advisory Committee thus endorses the present trend in data collection, e.g., toward concentration on "'crucial bits' of information which are most accurate predictions . . ." S. Wheeler, *On Record* (1969). By establishing such a system, controls are built in to prevent the accumulation of unnecessary information. *See generally* IJA/ABA, *Planning for Juvenile Justice*, Standard 3.1 and Commentary. Since only relevant information will be collected, the decision-making process of planners may be shortened. Evaluating excess information is time consuming and may "frustrate rather than assist the planning decision-making process." *See* IJA/ABA, *Planning for Juvenile Justice*, Standard 3.1 and Commentary.

Examples of specific data that should be collected have been well delineated by the Task Force as follows: (1) demographic statistics accurately portraying the juvenile population; (2) data on the number and characteristics of juveniles who have had formal or informal contact with any juvenile service agency; (3) data on school dropout and truancy rates; and (4) data on youth unemployment rates. *Report of the Task Force, supra* at Commentary to Standard 26.1. This standard requires that the information collected should be objective and current and should include budget data to assist planners in establishing the cost effectiveness of juvenile service programs. *Accord, Report of the Task Force, supra.* Data collected in this way will present a more accurate and fiscally precise picture of a state's current and developing areas of need. *Id.*

Duplicative, overlapping, and uninformative data should be eliminated and a valid and useful data base should emerge. By formulating an express policy of information collection, the centralized state agency can insure against indiscriminate collection. Rather, the agency should pursue a "conscious practice of limiting information collection to relevant, necessary, and lawfully collectible data." IJA/ABA, *Planning for Juvenile Justice*, Standard 3.1 and Commentary. Note that the information and data collected pursuant to this standard should be susceptible to collection and maintenance in a form which precludes identifying or associating any juvenile or family with such data. Thus, the data collection process recommended here should not normally require use of or reference to information identifying a juvenile or a family. *See* Standards 1.51-1.56, particularly Standard 1.535.

Related Standards

1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.125	Evaluation of Local and State Efforts
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development
1.27	Program Coordination
1.28	Program Development
1.29	Program Implementation
1.3	Evaluation and Research
1.31	Development of an Evaluation System
1.32	Development of a Research Capability
1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.531	Access to Police Records
1.532	Access to Court Records

1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534 Access to Child Abuse Records
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54 Completeness of Records
1.55 Accuracy of Records

1.22 Inventory and Analysis of Community Resources

The local planning authority in conjunction with the state agency should develop and maintain an inventory of state and local juvenile justice and delinquency prevention services.

The inventory should summarize the functions of the public and private service agencies according to a standardized format which lists:

- **a. The agency, name, location, and service-delivery area;**
- **b. The types and descriptions of services provided;**
- **c. A description and availability of physical facilities;**
- **d. A description of client groups served and intake criteria;**
- **e. Information concerning referral procedures, costs, and waiting periods;**
- **f. The level, source, and type of funding utilized; and**
- **g. A description of administrative and staff structures.**

The inventory should be analyzed to determine the scope of the existing juvenile service system at the state and local level and to identify gaps in the juvenile service delivery system. In addition, an effectiveness assessment should be undertaken of existing programs intended to provide preventive and corrective services.

Source:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 1.5, 1.6, 26.1, and 26.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Planning for Juvenile Justice,* Standards 3.1-3.5 (tentative draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

An important function of the state agency, in conjunction with local planning authorities, is the inventory and analysis of all state and local juvenile justice and delinquency prevention services. Such an inventory and analysis would aid the planning process both by identifying existing programs and by determining program needs. *See Report of the Task Force, supra* at Standard 1.5 and Commentary. In the absence of an analysis of available resources, "there is a danger that programs will be fragmented and will duplicate services" to youth. *Report of the Task Force, supra* at Standard 1.5, and Commentary. Definite methods for reviewing extant programs must be established to provide comprehensive planning for the state juvenile service system. *See Report of the Task Force, supra* at Standard 1.6 and Commentary.

The inventory and analysis recommended by this standard could be published, as suggested by the Task Force of the National Advisory Committee on Criminal Justice, and distributed to interested groups and agencies. *See Report of the Task Force, supra* at Standard 1.5 and Commentary. Such an inventory will point out existing approaches in the current juvenile justice and delinquency prevention system, and will function as a periodic audit of existing resources. It will help planners determine whether and how present programs address community problems. *See* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 3.4 and Commentary.

The inventory and analysis recommended by this standard will identify areas where change is needed and "broaden the range of inputs" available about the entire juvenile service system. *Report of the Task Force, supra* at Standard 26.1 and Commentary. "The analysis can also function as a means of conveying information from the juvenile justice system to the general community, thus creating feedback to make the system more responsive to community needs." *Id.*

Most information currently collected about juvenile service systems is broken down into categories that are too broad to be helpful. *See Report of the Task Force, supra* at Standard 1.3 and Commentary. This standard provides a process whereby the inventory can be broken down, analyzed, and summarized, and as a result be more useful to personnel within the system. *Id.*

Inventory analysis would also provide public accountability for the agency's information collection policies and practices as set out in Standard 1.21. Since public accountability has been lax in juvenile service systems, *see* Standard 1.126, the recommended inventory and analysis can help ensure accountability at least between local planning authorities and the state agency; the inventory process will be coordinated jointly and will be ultimately responsible to one central juvenile service agency. *See* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 3.4 and Commentary.

The Task Force has suggested that inventory and analysis should focus on two areas, e.g., (1) "the nature of juvenile justice problems" in the state and in local communities (based on data retrieved through a data collection process such as the one set out in Standard 1.21); and (2) "the resources available to deal with juvenile justice problems." *Report of the Task Force, supra* at Standard 26.1 and Commentary. The National Advisory Committee supports this approach.

One system of analysis recommended by the Task Force is the "system rate method." The system rate method

> uses a description of the various steps in the juvenile service system, from the point of the initial (contact) to final discharge of an individual from the system. All decision points are located and the range of possible decisions is identified. Data are collected to reflect what happens at each of these decision points, in order to determine how often each option is exercised. *Report of the Task Force, supra* at Standard 26.1 and Commentary.

The data will reflect the "system's actual functioning" and as such the system can be accurately analyzed. *Id.* Using a similar method, the central agency should be able to give all planning units within the system relevant information about existing agencies. *See Report of the Task Force, supra* at Standard 1.6 and Commentary.

By conducting an inventory according to the standardized format set out in paragraphs (a)-(g) of this standard, the state agency will be able to determine the scope of the existing juvenile service system, and the range of services available at both the local and state levels. By using data analyzed according to this standardized format, planners will be better informed and more refined judgments about the merits of particular programs will be possible. *See Report of the Task Force, supra* at Standard 1.6 and Commentary. *See also* Standards 1.125 and 1.31.

This standard further provides that the inventory and analysis process should also include at least an initial assessment of the effectiveness of each inventoried program.

Such a systemwide inventory, analysis, and effectiveness assessment is a prerequisite for the other planning steps provided in these standards. The inventory, analysis, and effectiveness assessment process will assist planners in determining the extent and nature of juvenile justice and delinquency prevention problems. *See* Standard 1.23. It will make it easier to identify community perspectives and gaps in the system, and to evaluate existing programs and the input of proposed programs on the existing system. *See, e.g.*, Standards 1.114, 1.125, 1.25, and 1.28, and Commentaries. *See generally* Kobetz and Bosarge, *supra* at 22. This process will permit the development of goals and programs on a centralized statewide basis. *See* Standards 1.25 and 1.28. *See also* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 3.1. By undertaking this inventory and analysis cooperatively, state and local planning authorities will achieve greater awareness of available and needed programs and be better able to focus on special target groups and on stated goals. *See Report of the Task Force, supra* at Standard 26.3 and Commentary.

Related Standards

1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.125	Evaluation of Local and State Efforts
1.21	Data Base Development and Collection
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development
1.27	Program Coordination
1.28	Program Development
1.29	Program Implementation
1.3	Evaluation and Research
1.31	Development of an Evaluation System
1.32	Development of a Research Capability

1.23 Problem Identification and Prioritization

The local planning authority and the state agency utilizing the statistical data and inventory resource analysis described in Standards 1.21 and 1.22 respectively, should develop a descriptive statement of the delinquency prevention and juvenile justice problems at the local and state levels.

The problem identification should include, at a minimum, data relating to:

a. The incidence of adjudicated delinquency and recidivism;
b. The incidence of adjudicated noncriminal misbehavior;
c. The incidence of dependency and adjudicated neglect and abuse;
d. The number of contacts with and the rates of diversion from the juvenile justice system;
e. The utilization of drug abuse, counseling, recreational, and other programs serving juveniles;
f. The rate of school-related difficulties such as dropping out, suspension, truancy, and problems in learning; and
g. The rate of youth unemployment.

The local planning authority and the state agency should then identify and prioritize the specific problems toward which prevention and system improvement efforts will be directed.

Source:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 1.3, 26.1, and 26.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 3.1-3.5 (tentative draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard recommends that local planning authorities and the state agency cooperatively develop a descriptive statement of delinquency prevention and juvenile service problems at the state and local levels. Such a statement can be accomplished by using the statistical data and inventory analysis described in Standards 1.21 and 1.22, respectively.

The Task Force calls for a "problem statement" analogous to the "descriptive statement" required here. A problem statement "should specifically define the imbalance between the desired and existing states in order to provide guidance to the progam development process. *See Report of the Task Force, supra* at Standard 26.3 and Commentary. Like the Task Force, the National Advisory Committee recognizes that developing a "descriptive" or "problem" statement is difficult and requires knowledge of the complex interactions among state and local agencies. *Id.*

However, a sound "descriptive" or "problem" statement is a useful planning tool. By developing such a descriptive statement, planners can discover where the present achievements of the juvenile service system diverge from the goals desired, and can identify the problem areas. *Report of the Task Force, supra.* Guidelines can then be developed for new or altered programs. *Id.* The White House Conference on Children also recommends that existing departments should consider "the advantages and disadvantages of different plans and structures" within currently existing systems. White House Conference on Children. *Report to the President,* 390 (1970). By doing this, the centralized agency would be able to expose areas of inadequacy and prevent the duplication or supplanting of existing services.

Another part of problem identification and prioritization is identifying community perspectives. *See Report of the Task Force, supra* at Standard 26.1. The community should have a role in defining the scope and organization of juvenile justice and delinquency prevention services.

What guidelines do exist today often do not express the theoretical basis which underlies the choices made. *See* E. Lemert, "Records in Juvenile Court," *On Record,* 556-57 (Wheeler, ed. 1969). The method of problem identification and prioritization under this standard should enable local planning authorities and the state agency to formulate and express theoretical bases for identifying and giving priority to specific problems toward which prevention and system improvement efforts can be directed.

Related Standards

1.112 Development of a Local Juvenile Service Plan
1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114 Evaluation and Modification of the Local Juvenile Service System Program Efforts

1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.124 Provision of Financial and Technical Resources
1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133 Allocation of Financial and Technical Resources
1.21 Data Base Development and Collection
1.22 Inventory and Analysis of Community Resources
1.24 Needs Identification
1.25 Goal Development
1.26 Strategy Development
1.27 Program Coordination
1.28 Program Development
1.29 Program Implementation
1.31 Development of an Evaluation System
1.32 Development of a Research Capability

1.24 Needs Identification

The local planning authority in conjunction with the state agency, following the review and analysis of the juvenile service statistical data, resource inventory, and problem statements described in Standards 1.21-1.23 respectively, should identify the needs of the existing juvenile service system

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Justice and Delinquency Prevention,* Standards 1.3 and 26.4 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 3.1-3.5 (tentative draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

This standard recommends that the local planning authority in conjunction with the state agency identify needs within the existing juvenile service system. This needs identification would take place after the development of the collection process, the information base, the resource inventory, and the problem statements provided for in standards 1.21, 1.22, and 1.23. This standard and Standards 1.21-1.23 are intended to pinpoint gaps and inadequacies so that the juvenile service system can be made more responsive to the actual needs of youth. *See* Kobetz and Bosarge, *supra.*

The IJA/ABA Joint Commission suggests that a state agency should regularly evaluate its information policies and practices for two reasons:

1) in order to provide a guide for its own evaluation and improvement of its operation, and
2) in order to provide a public statement so that interested citizens and public officials can monitor its operations. IJA/ABA, *Planning for Juvenile Justice, supra* at Commentary to Standard 3.4.

By carrying out the processes established in Standards 1.21-1.23, the state agency will identify needs more easily and accurately. The identification of needs will further the purposes of information collection, inventory analysis, and problem identification and prioritization. Such a process will also assist the state agency in establishing guidelines for evaluation and improvement of its own data collection processes, as suggested by the IJA/ABA, *Planning for Juvenile Justice,* in Standard 3.4. In addition, needs identification will "serve to inform citizens and thereby enhance public monitoring and the accountability of the juvenile service system within the state." *Id.*

The Task Force recommends that following the steps described in Standards 1.21-1.23, the next step is to "interact directly with the system's operating elements to develop programs by considering alternative solutions and selecting the preferred one." *Report of the Task Force, supra* at Standard 26.4. The goal of this standard is similar. By collecting valid information, by taking inventories and analyzing resources, and by identifying problems and placing priorities upon them, the state agency will be able to develop programs geared to specific problems. By identifying the needs of a system, planners will be able to identify the overall goals of the juvenile justice system, the target populations involved, and each program's relation to overall system goals as required by subsequent standards, e.g., Standards 1.25 and 1.28. *See Report of the Task Force, supra* at Standard 26.4 and Commentary. After identifying such factors, planners should be able to devise precise methods to deal with areas of need. This approach will also enable planners to compare alternative solutions in light of the needs identified. Needs should be identified with as much detail and specificity as possible.

Related Standards

1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.122	Development of a State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.132	Development and Implementation of National Juvenile Justice and Deliquency Prevention Standards
1.133	Allocation of Financial and Technical Resources
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.25	Goal Development
1.27	Program Coordination
1.28	Program Development
1.29	Program Implementation
1.31	Development of an Evaluation System
1.32	Development of a Research Capability

1.25 Goal Development

The local planning authority in conjunction with the state agency should develop specific juvenile justice and delinquency prevention goals directed at the resolution of the problems and needs identified through the planning process.

The goals developed by the local and state planning units:

- **a. Should be based on available knowledge and stated in clean and concise terminology;**
- **b. Should reflect the desires, concerns, characteristics, and available resources of the community;**
- **c. Should allow for measurement;**
- **d. Should be achievable within a specified time frame;**
- **e. Should provide the focus for all subsequent planning, implementation, and evaluation activities; and**
- **f. Should be responsive to modification and redirection.**

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 1.4 and 26.2 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 3.1-3.5 (draft, 1976).

Commentary

The primary function of any centralized agency is to set goals. A goal is "a statement of a desired condition of a system at a fixed point in the future." *Report of the Task Force, supra* at Commentary to Standard 26.2 This standard emphasizes that local planning authorities and the state agency must work together to develop goals directed at solving the problems and needs identified through the processes described in Standards 1.23 and 1.24. Goals developed cooperatively by the state agency and local planning authorities should be the focal point during all subsequent steps in the planning process. *See* Paragraph (e) of this standard; and Commentary to Standard 1.21.

The goals developed should be clearly defined and should "reflect the desires of the community." *Report of the Task Force, supra* at Standards 1.6 and 26.2, and Commentaries. Lack of feedback from the community has, in the past, sometimes meant selection of the wrong goals, or the lack of any clear goals at all. This lack of feedback may have resulted from the false assumption within the juvenile service system that juveniles can be treated in isolation from their families and their communities. *See* R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 451-452 (International Association of Chiefs of Police, 1973). In contrast, this standard assumes that the most effective way to rehabilitate juveniles is through familial and community support. *See generally* Kobetz and Bosarge, *supra* at 448-452. The centralized agency should, therefore, seek out and solicit community feedback to develop goals for an effective juvenile service system which incorporates the perceptions of the community. By involving local planning authorities and the "grassroots" community, the goals developed should better reflect the desires, concerns, characteristics, and available resources of the community. Goals developed in this way should be more appropriate and realistic. Solutions geared to those goals are more likely to be implemented and to succeed. *See generally* Kobetz and Bosarge, *supra* at 451; and W.H. Sheridan and H.W. Beaser, *Model Acts for Family Courts and State-Local Children's Programs,* Part II, Section 3(e), (Department of H.E.W., n.d.).

The methods by which planners will attempt to meet these developed goals will be facilitated by clear and accurate statements of the intent and focus of these goals. *Report of the Task Force, supra* at Standard 26.2 and Commentary. Planners in the juvenile service system should understand sources of conflict within the community that may create disagreement in formulating stated goals. The National Advisory Committee has become well aware that there are widely differing views in the area of juvenile justice and delinquency prevention. As the Task Force has pointed out, these differing views stem from differences in how community members define serious delinquency, how they feel about the characteristics of individual juveniles, how they choose to emphasize the various causes of juvenile contact with the court system, how they access possible solutions to juvenile problems, etc. *See Report of the Task Force, supra* at Commentary to Standard 1.4. Despite these complex differences, paragraph (a) of this standard recommends that the goals developed should be stated in clear and concise terms and should be based on "available knowledge." The Task Force has suggested one approach for accomplishing this requirement known as the "Delphi Method," which was developed originally by the Rand Corporation for use by the Department of Defense. The Delphi Method proposes distribution of a series of questionnaires to various individuals in the planning process and the community. This method may avoid problems and frictions that arise from more direct interpersonal discussions of what the goals should be. Through redistribution to the same individuals of successive waves of follow-up questionnaires, goals can be narrowed and concisely stated—as required by paragraph (a) of this standard—to avoid contradictory interpretation in the future.

See Report of the Task Force, supra at Standard 26.2 and Commentary.

In delineating "available knowledge" as one criterion for setting goals, this standard anticipates that local planning authorities and the state agency will seek community opinions to ascertain what knowledge is "available" within the community. The processes set out in Standards 1.23 and 1.24 may be helpful in fulfilling this recommendation.

Paragraph (b) suggests that the community must be asked, among other things, "why a particular type of delinquent behavior may be a cause for community alarm and what values are threatened by different types of delinquent behavior." *Report of the Task Force, supra* at Standard 1.4 and Commentary. If local planning authorities and the state agency accurately determine the perspectives of the community, the possibility that at least some intracommunity conflicts may be resolved at the outset should improve planning. *Id.* In seeking to resolve conflicts among participants in the planning process, a self-assessment survey process has been suggested by the Task Force. The National Advisory Committee endorses this suggestion. As the Task Force has indicated, a self-assessment survey is one rough method to aid planners in understanding their own assumptions about the juvenile process, and to better enable them to compare their own assumptions with those of the community. *See Report of the Task Force, supra* at Standard 1.4 and Commentary. The centralized agency will have a better idea of whether proposed solutions will be supported or resisted by the community. *Id.*

Paragraph (c) of this standard directs that the goals developed should allow for measurement. The planning process within a centralized juvenile service system should not stagnate. To prevent stagnation, the success or failure of the system should be determined by reviewing and evaluating the effectiveness of the implemented programs. *See* Standards 1.114, 1.125, 1.134, and 1.31. The goals developed must, therefore, be specific enough to be measured. The degree of improvement expected should be indicated numerically (by percentages or otherwise) whenever possible. For examples of such specificity, *see Report of the Task Force, supra* at Commentary to Standard 26.2

The measurement of the system and its services should trigger inquiry into whether the goals initially developed are being achieved, and whether the initial goals are realistic. Measurement will permit time for planners to correct or modify goals if necessary, and will inform and perhaps modify program funding decisions. *See* Standards 1.114, 1.125, 1.134, and 1.31; and *Report of the Task Force, supra* at Standard 26.2 and Commentary.

The goals set should be realistic, e.g., they should be capable of achievement both pragmatically and politically. Political facts of life (i.e., new budget constraints or agency battles for limited funds), "countertrends" (i.e., movements for more—rather than less—pretrial detention of children, or more widespread prosecution of juveniles within the adult criminal system), and fluctuating resources are all factors to be considered in determining whether stated goals were, and continue to be, realistic. *See Report of the Task Force, supra.*

A time frame should be determined within which goals developed will be met. *Accord, Report of the Task Force, supra* at Commentary to Standard 26.2 Like the goals themselves, the time frame specified for their achievement should be realistic. Setting unreasonable time contraints on goal achievement will only frustrate program participants and may result in unnecessary and harmful rotation of children among particular programs. *See Report of the Task Force, supra.*

The trend among governmental units is toward five-year time frames for budget forecasts. *Id.* As the Task Force has noted, five years is short enough to predict accurately the success or failure of a program and long enough to resolve the minor problems that any new program will face. *Id.* at Standard 26.2 and Commentary. For these reasons, the National Advisory Committee recommends a five-year time frame.

Paragraph (e) of this standard directs that the goals developed should be the focus for all subsequent planning, implementation, and evaluation. As stated in the opening paragraph of this commentary, the goals of current juvenile service systems have not always been realistic or even reasonable. By complying with paragraphs (a) through (c) of this standard, subsequent planning, implementation, and evaluation should occur more smoothly. There should be little cause for the wasteful, time-consuming stops-and-starts, or the wholesale reversals in direction and emphasis which frequently have frustrated the delivery of services to children.

Finally, paragraph (f) of this standard requires flexibility in the goal development process. As pointed out above in the commentary to paragraph (c) of this standard, setting goals should be a dynamic and ongoing process. *See Report of the Task Force, supra.* No purpose would be served by adherence to a goal that is out-dated or too rigid. Therefore, goal setting should be responsive to modification and redirection. *Id.* Changed circumstances should be met as they arise, to assure a planning program which is up-do-date and responsive. If the information, evaluation, inventory, and analysis data is regularly reviewed by those setting goals, the goals development process should not stagnate.

Related Standards

1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.122	Development of a State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.125	Evaluation of Local and State Efforts
1.133	Allocation of Financial and Technical Resources
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.24	Needs Identification
1.26	Strategy Development
1.27	Program Coordination
1.28	Program Development
1.29	Program Implementation
1.31	Development of an Evaluation System
1.32	Development of a Research Capability

1.26 Strategy Development

The local planning authority in conjunction with the state agency should develop strategies to indicate the specific methods through which the goals described in Standard 1.25 will be accomplished.

The strategy development process should include:

- **a. The formulation of selection criteria;**
- **b. A review of alternative strategies; and**
- **c. The selection of the most appropriate strategies.**

The strategies should specify the existing or proposed agency responsible for implementation.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 26.2-26.5 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 3.1-3.5 (draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

Program implementation at the local level must begin with the development of strategies. Strategies are specific methods through which the goals developed, pursuant to Standard 1.25, can be accomplished. This standard recommends that local planning authorities and the state agency develop these strategies jointly. This joint, coordinated process of strategy development should enable the centralized agency both to maintain the organization and structure of its programs, and to help delineate the specific methods through which the juvenile justice and delinquency prevention goals will be achieved. This standard emphasizes the need for continuity and centralization in a state's juvenile service system.

This standard recommends that the strategy development process include the formulation of criteria by which to choose among competing strategies. The criteria for selection will be meaningful and precise only if the goals described in Standard 1.25 are clearly defined. The selection criteria will serve to ensure that the strategies adopted culminate in appropriate programs to meet the announced goals.

A review of alternative strategies must also be part of the process of strategy development. Alternative strategies should be fairly compared. The target populations, problems, and ways in which the methodology would deal with these factors must be assessed. Assumptions about the relationship between the causes of the problems in a target population and the way certain strategies will deal with these causes are other important factors to compare in reviewing alternative strategies. *See Report of the Task Force, supra* at Standard 26.4 and Commentary. Information should be provided on each strategy to ensure informed decision making. *Report of the Task Force, supra* at Standard 26.4 and Commentary.

The selection of the most appropriate strategies is the final step in strategy development. Strategy selection should follow the planning processes set forth in Standards 1.21-1.25 and the strategy development process set out in this standard.

Strategies are necessary in any juvenile service system planning process. When strategies are developed and detailed explanations are provided, policymakers and planners can make valid assumptions about how a particular program will work within the total juvenile service system. *See generally Report of the Task Force, supra* at Standards 26.4 and 26.5, and Commentaries.

Finally, this standard requires that the strategies developed specify which existing or proposed agency will be responsible for strategy implementation. By doing so, that agency will be able to assess how a proposed program fits into its budgetary cycle. The agency will be able to set up appropriate administrative, accounting, auditing, and funding sources to implement the proposed strategies and will be able to predict activities, resources, personnel selection, and training time, and to locate facilities. *See Report of the Task Force, supra* at Standard 26.5 and Commentary.

Related Standards

1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, Implementation of Local Juvenile Service Programs and Guidelines
1.122	Development of a State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.132	Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Distribution of Financial and Technical Resources
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.27	Program Coordination

1.28 Program Development
1.29 Program Implementation

1.31 Development of an Evaluation System
1.32 Development of a Research Capability

1.27 Program Coordination

The local planning authority in conjunction with the state agency should foster juvenile service system coordination, continuity, and cohesiveness for both the implementation of new programs and the provision of existing juvenile justice and delinquency prevention services.

The coordination process should assure that each of the local and state-level juvenile services providers:

- **a. Clarifies its interdependent relationship with other service providers;**
- **b. Standardizes professional definitions and methods of interagency communication; and**
- **c. Has the authority and capacity to enter into formal and informal agency agreements in accordance with established state and local standards relating to juvenile service provision.**

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 1.6 and 25.1 (1976); and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice,* Standards 3.1-3.5 (tentative draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard emphasizes program coordination between local planning authorities and the state agency. Coordination between the two should foster the continuity and cohesiveness—suggested throughout these standards—in implementing existing and new juvenile justice and delinquency prevention services. *See* Standards 1.21-1.26, and 1.28-1.32, and Commentaries. The centralized agency can accomplish its purposes by coordinating the structure of all juvenile service agencies within the state, thereby ensuring adequate delivery of services. *Report of the Task Force, supra* at Standard 2.3 and Commentary.

The single, centralized agency recommended in these standards would integrate all juvenile services through the planning process. Statewide planning will facilitate the coordination of all juvenile justice and delinquency prevention services. *See generally Report of the Task Force, supra* at Standard 2.3 and Commentary; and Standards 1.121-1.126, *supra.*

The process of coordination recommended here should create an interdependence of local and state-level juvenile service providers. In creating a centralized juvenile service agency with all local and state-level agencies responsible to it, this integrated and interdependent relationship must be clarified for a number of reasons. Neither the centralized agency nor state and local-level juvenile service providers operate in a vacuum. Many other agencies provide information and collateral services to the juvenile service system, and the interdependent relationship emphasized in this standard should provide the coordination, continuity, and cohesiveness necessary to sustain an effective system. Also, local and state-level juvenile service providers should inform collateral service providers about the impact of specific juvenile justice or delinquency prevention programs upon one another. *See generally Report of the Task Force, supra* at Standard 1.6 and Commentary; and W.H. Sheridan and H.W. Beaser, *Model Acts for Family Courts and State and Local Children's Programs,* Part II, Title A, Section 7 (Department of H.E.W., n.d.).

Paragraph (b) of this standard recommends the standardization of professional definitions and interagency communications. State and local-level juvenile service agencies should be able to provide other planning agencies with pertinent information about their experiences with specific programs. Purposes and policies of all juvenile service agencies should be available to other agencies within a state to provide a comprehensive picture of a state's response to its juvenile problems. Professional definitions are often broad and vary widely. Standardization of these definitions would facilitiate interagency communication. See generally *Report of the Task Force, supra* at Standard 1.6 and Commentary.

Other standards-setting groups have not specified the authority of local and state-level juvenile service providers to enter into formal and informal agency agreements. The Task Force does, however, recognize the need for a state to delegate to specific government units the responsibility for juvenile justice and delinquency prevention planning and evaluation and thus, implicitly, to authorize these units to enter such agreements. *Report of the Task Force, supra* at Standard 25.1 and Commentary.

This standard specifically gives local and state-level juvenile service providers authority to enter into agency agreements, thereby insuring that all providers are responsible for their actions in the provision of juvenile justice and delinquency prevention services, and increasing systemwide coordination, continuity, and cohesiveness.

Related Standards

1.112 Development of a Local Juvenile Service Plan
1.113 Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.122 Development of a State Juvenile Service Plan
1.123 Development of State Standards and Guidelines
1.124 Provision of Financial and Technical Resources
1.132 Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133 Allocation of Financial and Technical Resources
1.21 Data Base Development and Collection
1.22 Inventory and Analysis of Community Resources
1.23 Problem Identification and Prioritization
1.24 Needs Identification
1.25 Goal Development
1.26 Strategy Development
1.28 Program Development
1.29 Program Implementation
1.31 Development of an Evaluation System
1.32 Development of a Research Capability

1.28 Program Development

The local planning authority in conjunction with the state agency should designate the appropriate service agencies to be responsible for developing the specific programs, policies, and system modifications necessary to implement the recommended strategies described in Standard 1.26.

The program development process should assure that program plans:

- **a. Identify specific and measurable goals;**
- **b. Define the target population;**
- **c. Describe the program's relationship to the local and state juvenile service system, the implementing agency, and the local juvenile service plan;**
- **d. Specify the method and cost of service delivery; and**
- **e. Delineate the criteria for evaluating the program's effectiveness.**

To facilitate the development process, the local planning authorities and the state agency should provide technical assistance and consultation.

Source:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 1.6 and 26.4 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning for Juvenile Justice*, Standard 3.4 (tentative draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard recommends that local planning authorities and the state agency designate the specific service agencies which will have responsibility for developing the specific programs, policies, and system modifications necessary to implement the strategies developed pursuant to Standard 1.26. To implement the recommended strategies, the designated service agencies are given guidelines for program development in paragraphs (a)-(e) of this standard.

Agencies should select programs that are sensitive to the goals of a community, *see* Standard 1.25, and that are responsive to the priorities established in the comprehensive juvenile justice and delinquency prevention plan, *see* Standard 1.23. *See generally Report of the Task Force, supra* at Standard 1.6 and Commentary. By designating appropriate agencies, the local planning authority and the state agency are delegating the authority for program development, thus providing interaction directly with the system. *See generally Report of the Task Force, supra* at Standard 26.4 and Commentary.

This standard suggests that program development should involve five elements. Paragraph (a) requires that the appropriate agency identify specific and measurable goals in its program plans. By announcing specific goals, program plans that do not meet these goals can be identified and eliminated, and the basis for comparison between programs will be narrowed and clarified. A program plan must meet the specific goals defined in Standard 1.25 in order to improve the overall juvenile service system. Some early experiences with programs funded in part by the Law Enforcement Assistance Administration (LEAA)—e.g., the so-called "pilot cities" programs—amply demonstrate that the failure to identify specific and measurable program goals is an invitation to disaster.

Paragraph (a) requires that the goals specified for the designated agencies should be "measurable" goals. *See also* paragraph (c) of Standard 1.25. Program plans must have measurable goals to properly interact with and effect the current juvenile service system. The specific goals identified in program plans should be keyed to the overall goals of the system. Program developers should be explicit about the means by which the success of failure of a program can be determined. The measures of success or failure should be clearly related to the measures determined in the goal setting process, to ensure the continuity and cohesiveness of the system's programs. The measurable criteria should be included as an "integral part of the program;" the plan should detail the method by which "the measurable information will be collected and analyzed." *See Report of the Task Force, supra* at Standard 26.4 and Commentary; W.H. Sheridan and H.W. Beaser, *Model Acts for Family Courts and State and Local Children's Programs*, Part II, Title A, Section 3(c) (Department of H.E.W., n.d.).

Paragraph (b) of this standard requires that program plans define the "target population." The target population is the people the program plan is intended to effect. The importance of the target population within the overall population should be described in relationship to the overall population and to the problems identified. This will assure that appropriate methodologies will be created to deal with the target populations identified in a particular program plan. *See Report of the Task Force, supra* at Standards 26.4 and 1.26, and Commentaries.

A program's relationship to the local and state juvenile service system and to the implementing agency should be considered in the program development process, *see* paragraph (c) of this standard, to help assure continuity and cohesiveness in the overall system. In describing this relationship pursuant to paragraph (c), the program plan should include a definition of the problems the plan is designed to remedy, information on alternatives under its plan, information about present programs that may be affected by the implementation of the plan, and information about how the plan would fit into the administrative and fiscal structure of the implementing agency. *See generally Report of the Task Force, supra* at Standards 1.6 and 26.4, and Commentary.

The methods and cost of service delivery must also be specified in a program plan. The Task Force recommends that the precise methods a program will utilize to deal with target populations and the costs of these methods should be specified. *See Report of the Task Force, supra* at Standard 26.4. and Commentary. This information is needed in order for the agency to compare alternative programs intelligently. Also recommended is that "specific attention be paid to the assumptions about the relationship between the causes of behavior in a target population and the ways in which the methods will deal with those causes." *Report of the Task Force, supra* at Standard 26.4 and Commentary. This standard provides the same guidance by its mandate in paragraph (d) that methods must be specified.

The cost of service delivery must also be specified under paragraph (d) of this standard. Duplicating or supplanting programs already in existence has caused a tremendous waste of limited juvenile service resources. *See* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 3.4; White House Conference on Children, *Report to the President*, 390 (1970); Sheridan and Beaser, *supra* at Part II, Title A, §3(f)(g).

Paragraph (e) calls for the delineation of criteria for evaluating a program's effectiveness. Effective evaluation is critical to program development. The criteria set out in the program plan will enable the agency to determine whether there is any need for modification or redirection of the systemic goals developed pursuant to Standard 1.25. *See* Standard 1.25 (f) and Commentary. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Standard 3.4; and Sheridan and Beaser, *supra* at §3(a).

Finally, to ease the program development process, the local planning authorities and the state agency should render technical assistance and consulting advice to the designated agencies that are to carry out the process. R. Kobetz and B. Bosarge, *Juvenile Justice Administration*, 60-63 (International Association of Chiefs of Police, (1973). *See generally Report of the Task Force, supra* at Standards 1.5 and 1.6, and Commentary. This technical and consultant assistance could be rendered in the form of recurring evaluations and advice to the designated agency about evaluation results. *Report of the Task Force, supra* at Standard 26.2 and Commentary. Such assistance could also take the form of the development and communication of improved techniques which may improve the juvenile service system. Techniques for training personnel may also be a particularly fruitful area for state and local technical assistance to particular designated agencies. *See* Sheridan and Beaser, *supra* at Part II, Title A, Section 4.

Related Standards

1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.122	Development of a State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.132	Development and Implemenation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Allocation of Financial and Technical Resources
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.27	Program Coordination
1.29	Program Implementation
1.31	Development of an Evaluation System
1.32	Development of a Research Capability

1.29 Program Implementation

The local planning authority in conjunction with the state agency should approve and oversee the implementation of the juvenile service programs, policies or system modifications developed according to Standard 1.28.

Each program should have a detailed implementation outline. The implementation plan should specify the sources, types, and quantities of resources to be utilized, the timetable and method for implementation, the criteria and method of evaluation, and the relationship to the juvenile service plan.

The local planning authority and the state agency should provide the necessary resources or serve as advocates for such resources to facilitate the implementation of new and expanded programs and assure the maintenance of existing services.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 26.4 and 26.5 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning and Juvenile Justice,* Standards 3.1-3.5 (draft, 1976) [hereinafter cited as IJA/ABA, *Planning for Juvenile Justice*].

Commentary

This standard provides that approval and oversight for implementation of juvenile service programs developed in accord with Standard 1.28 should be handled jointly by the local planning authority and the centralized state agency. This approach takes ultimate responsibility for final program implementation out of the hands of the individual service agencies designated to develop programs pursuant to Standard 1.28, and places it with the more centralized and powerful state agency and local planning body.

The philosophy underpinning this and the preceding standard is that with appropriate guidance, the individual service agencies are best equipped to develop specific, comprehensible, and workable programs with a realistically narrow geographic scope, *see* Standard 1.28 and Commentary, and that the local or regional planning body and the state agency are best equipped with the centralized authority necessary to insure program implementation. *See generally* IJA/ABA, *Planning for Juvenile Justice, supra* at Standards 3.5A. and 3.5B.2 and Commentary. This standard specifically calls upon both local planning authorities and the centralized statewide agency to provide necessary resources or to serve as advocates to secure resources to insure the implementation of new or expanded programs, as well as to assure the maintenance of existing services. Most other standards-setting groups have likewise recommended some form of centralized responsibility for program implementation to guarantee the support necessary for program innovation and expansion. *See* W.H. Sheridan and H.W. Beaser, *Model Acts for Family Courts and State-Local Children's Programs,* §4 (1974); R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* (International Association of Chiefs of Police, 1973); *Report of the Task Force, supra* at Standard 26.5 *Cf.* IJA/ABA, *Planning for Juvenile Justice, supra* at Standards 3.5A. and 3.5B.2 and Commentary.

This standard would require the development of a detailed implementation outline; such an outline is a prerequisite to effective implementation efforts. The preparation of an implementation outline requires reaching a high level of specificity and concrete detail. Without it, an intelligently conceived program might languish at the pre-implementation stage. An implementation outline also informs policy makers and program managers about new programs. Accordingly, other major standards-setting groups have likewise required some form of implementation outline at this stage in the planning process. *See Report of the Task Force, supra* at Standard 26.5. *Cf.* IJA/ABA, *Planning for Juvenile Justice, supra* at Standards 3.5A. and 3.5B.2, and Commentaries.

This standard requires that the implementation outline should specify funding sources, the types and quantities of resources to be used, the timetable and precise method of implementation, the criteria for and method of program evaluation, and the program's relationship to the total juvenile service plan. Basically, the outline—like the similar implementation "plan" recommended by the Task Force—should spell out for both policy makers and program directors whatever specific steps must be taken to implement the program. *See Report of the Task Force, supra* at Commentary to Standard 26.5.

Information about the source of program funding will enable program administrators to determine how the program will mesh with current budgetary cycles. This part of the outline should specify the administrative procedures necessary to acquire and disburse funds. *Accord, Report of the Task Force, supra* at Standard 26.5 and Commentary. The type and quantity of resources to be used is critical in projecting fluctuations in operations and allowances which must be made over the life of a program. Required accounting and audit procedures should be spelled out. *Id.*

The implementation outline should specify the steps and methods necessary for implementation, and establish a timetable for undertaking those steps. This will permit sensible administrative responses to new programs, and will help administrators make the bureaucratic adjustments necessary to implement new programs. Organizational support for or opposition to the new program can be gleaned within this timetable, and accommodations in the method of implementation could thus be made in appropriate cases. *See Report of the Task Force, supra.* The required timetables should be precise. For example, time for start-up, for staff selection and training, for facilities selection and procurement, for staff size fluctuations, and any anticipated periodic fluctuations in the size of the client population, should all be specified. *Id.*

This standard also requires that the implementation outline should specify the criteria and the methods by which the new program will be evaluated. The criteria and methods of evaluation are no less important for a new program than for an old one. The Task Force recommends that mechanisms be developed for obtaining feedback within the program, and from the program to the organization's policy makers. *Id.* Through such mechanisms formal and informal evaluation could occur frequently and problems could be identified. Internal feedback for program staff is particularly crucial in a new program to determine quickly whether any modifications are necessary to achieve the program's stated goals.

Related Standards

1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.122	Development of a State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.132	Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Allocation of Financial and Technical Resources
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development
1.27	Program Coordination
1.28	Program Development
1.31	Development of an Evaluation System
1.32	Development of a Research Capability

1.3 Evaluation and Research

1.31 Development of an Evaluation System

The local planning authority described in Standard 1.111, in conjunction with the state agency described in Standard 1.121, should develop an evaluation system with the capability of assessing the juvenile justice and delinquency prevention activities delineated in Standards 1.114 and 1.125. The evaluation system should standardize, coordinate, and augment internal and external state and local evaluation processes of the juvenile justice system.

The evaluation system should provide information to assist the local and state planning and coordinating process in defining the objectives of evaluation efforts and determining:

- **a. The issues capable of being evaluated in accordance with Standard 1.28;**
- **b. Whether to accept or reject a program approach to theory;**
- **c. Whether to continue, discontinue, or modify programs, practices, and procedures;**
- **d. Whether to institute similar programs elsewhere;**
- **e. Whether to allocate resources among competing programs;**
- **f. What information should be collected and why;**
- **g. How that information should be utilized;**
- **h. The method of and the persons responsible for the collection, compilation, and analysis of the information; and**
- **i. When and how the findings should be disseminated.**

Procedures should be established for evaluation information to be reviewed and responses developed by appropriate parties, including the programs and agencies evaluated and associated outside agencies and groups, prior to the acceptance and implementation of the evaluation recommendations.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 27.4 (1976) [hereinafter cited as *Report of the Task Force*]; and S. Isaac and W. Michael, *Handbook in Research and Evaluation* (1974).

Commentary

These standards recommend that the local planning authority assume an evaluation function to determine the quality of juvenile services being provided and to identify gaps in the kinds of services available. *See* Standard 1.114. Since the local planning authority is an element of the planning process which is closest to those receiving services, it is the element best able to directly involve the juvenile services constituency in the planning process, to assess programs from the point of view of those directly affected, and to initiate and review proposals for change based upon evaluation. *Id.* This standard and subsequent Standard 1.32, and their commentaries, describe in detail this evaluation system and how it should best be developed.

While evaluation has many connotations, for purposes of these standards it can be defined in relation to two functions: performance monitoring and intensive evaluation. Performance monitoring primarily concerns the measurement of project activities. In order to do this, standardized performance measures (e.g., diversion rates, recidivism rates) are gathered and analyzed. A complex research design or the permanent involvement of social-scientific experts is unnecessary for effective performance monitoring. Intensive evaluation, on the other hand, encompasses the analysis of project results to determine if they were caused by project activities. For intensive evaluation, additional data elements must be collected and analyzed, and the assistance of social scientists is necessary. The purpose of intensive evaluation is "to find out not only what works but also why it works." *Report of the Task Force, supra* at Introduction to Chapter 27. Thus, projects have objectives which relate to implementation activities—e.g., to serve clients, to harden targets—that are assessed by performance monitoring; and objectives which relate to outcomes—e.g., to reduce recidivism, to decrease the incidence of criminal activities—that are assessed by intensive evaluation. *See* Law Enforcement Assistance Administration, Criminal Justice Planning Institute, *Training Manual*, 8-1 (draft, 1976) [hereinafter cited as CJPI, *Training Manual*].

This standard primarily addresses evaluation by means of performance monitoring. Standard 1.32 primarily addresses intensive evaluation. "Intensive evaluation" is also frequently referred to as "evaluation research," and Standard 1.32

discusses the development of such an evaluation research capability. The term "evaluation" is also used throughout these standards in a generic sense to refer both to performance monitoring and to more intensive evaluation research. *See Report of the Task Force, supra* at Introduction to Chapter 27.

It is left to each locality or region, in conjunction with the state agency described in Standard 1.121, to determine the optimal mix of performance monitoring and evaluation research that best meets local evaluation needs. The National Advisory Committee, like the Task Force, contemplates that performance monitoring will constitute the fundamental part of the evaluation process. *See Report of the Task Force, supra* at Standard 27.2 and Commentary. Research can best be used to supplement the basic performance monitoring system developed pursuant to this standard. *See* Standard 1.32.

The first portion of the remaining commentary discusses evaluation in its generic sense. It stresses the importance of routinely providing administrators with information about the extent to which programs are meeting their stated goals. It describes the control and direction over project evaluation which should be exercised by the local planning authority including developing the goals and strategies for the overall evaluation system; identifying what data must be collected; and selecting the methods of data collection and analysis most appropriate to the locality. The latter portion of the remaining commentary discusses the basic methods of the "performance monitoring" method. The importance of routinizing the systemwide collection of monitoring data is emphasized. The proper dissemination of evaluation findings is discussed. Finally, the commentary defines the different uses made by project managers and policy makers of basic performance monitoring versus intensive evaluation research.

Whether it takes the form of performance monitoring or intensive research, evaluation can supply information necessary for effective program planning. Administrators, who are increasingly faced with shrinking resources to meet human needs, desperately need information to help them effectively allocate scarce resources. In the past such data has seldom been available to juvenile justice managers in a usable form. The National Advisory Committee believes, and this standard seeks to assure, that administrators are routinely provided with information on the extent to which programs are meeting their goals. *See* D. Glaser, *Routinizing Evaluation: Getting Feedback on Effectiveness of Crime and Delinquency Programs* (National Institute of Mental Health Center for Studies of Crime and Delinquency, 1973). *See also Report of the Task Force, supra* at Commentary to Standard 27.3.

The particular evaluation efforts provided in this standard and Standard 1.32 are those of the local community—be it a municipality, county, or multi-county region. Standard 1.125 recommends that the centralized state juvenile service agency should also develop a sophisticated evaluation process to better assist and monitor state and local juvenile service efforts. *See* Standard 1.125 and Commentary. The evaluation efforts of the local planning organization provided in this standard necessarily will focus upon the *project* level where resources are utilized to produce an end product or service. However, local evaluation efforts also relate to the program level of which projects are components, and to the system level of which both programs and their implementing agencies are the components. *See* Standard 1.114 and Commentary. Each of these levels—project, program, and system—are progressively interrelated and contribute to the objectives of the successive level. The importance of the planning and evaluation which take place at the local level cannot be overemphasized. All planning activities of the state and federal governments—which deal primarily with programs and systems—ultimately are dependent upon local evaluations at the project level to afford direction in the allocation of resources. *See generally* J.S. Wholey et.al., *Federal Evaluation Policy,* 24 (1971). Thus, without a local evaluation function, planners at other levels are obstructed by lack of knowledge about the present state of a specific project, a particular program, or the entire juvenile service system. *See generally* CJPI, *Training Manual, supra* at 8-1. *See* Standard 1.114 and Commentary.

Before any effort to develop a new evaluation system such as that suggested by this standard, the local planning authority should specify the goals and strategies of the evaluation effort. Goals are what the evaluation system should accomplish. Strategies specify how goals will be met and include the general design of the evaluation system. *See Report of the Task Force, supra* at Standard 27.1. As an important part of these first steps, the local planning authority should determine what kinds of information decision makers need the most, in rank order according to the utility of each kind of information. *Accord, Report of the Task Force, supra.*

Each local community will have somewhat different informational needs. However, it is anticipated that all evaluation systems will require information about the number of juveniles needing various services, about the size and characteristics of the total population of persons receiving various services under the dispositional jurisdiction of the family court, about client improvement, about program efficiency and effectiveness, and about the performance of the total juvenile service system. The evaluation system should at least be able to provide basic information about performance of individual programs, of combinations of programs, and of the total juvenile service system. *Accord, Report of the Task Force, supra* at Standard 27.1 and Commentary. Although this standard leaves it to the discretion of the local planning authority, through its evaluation system, to define the objectives of all evaluation efforts, the issues capable of being evaluated, and the information to be collected, related standards specify certain types of information which, at a minimum, should be available. *See* Standards 1.21-1.24. *See also Report of the Task Force,* Commentary to Standard 27.1.

This standard also provides that the evaluation system should provide information to assist the local planning authority to determine the method and the persons responsible for the collection, compilation, and analysis of information. No single rigid method of data collection—e.g., ongoing and longitudinal versus episodic; computerized versus manual—is mandated by this standard. All realistic methods of evaluation data collection should be considered. The special needs of local areas should be carefully considered. *See* Standard 1.21; and *Report of the Task Force, supra.*

A performance monitoring system of evaluation can be developed without the assistance of social-scientific experts in research design, statistics, etc.—except perhaps at the early development and phase-in stages of such an evaluation system. More intensive evaluation research, such as that further discussed in Standard 1.32, cannot, on the other hand, be left in the hands of personnel unsophisticated in research design, survey research and statistics. *See Report of the Task Force,* Commentary to Standard 27.2; *see also* Standard 1.32.

There are three basic components to performance monitoring. First, the goals of the program or system are defined in measurable terms. *See* e.g., Standards 1.25 and 1.28. Second, benchmarks or indicators of performance are identified by which progress, if any, toward program goals is judged. *See* Standards 1.25-1.26. Third, routinized procedures should be established for comparing the program's performance—measured by the identified performance indicators—with the program's goals. *See Report of the Task Force, supra* at Commentary to Standard 27.3. For an operational example of how this approach can work in practice, see the parent training project example discussed by the Task Force. *Report of the Task Force, supra* at Commentary to Standard 27.3. Meaningful performance monitoring should also include surveys of the perceptions of the client population as to the effectiveness of and deficiencies in programs.

A prerequisite to effective program monitoring is a uniform, standardized set of performance indicators and definitions. For example, measures of performance such as "recidivism," "cost per unit of service," and "diversion rate" must be defined consistently. Each local community should develop performance measures which employ standardized definitions. It should be the ultimate responsibility of the centralized state agency to assure the standardization of performance indicators and definitions within and across agencies, and among all local communities and planning authorities. *See* Standard 1.125. *Accord, Report of the Task Force, supra* at Commentary to Standard 27.3.

It is of critical importance that the collection and reporting of monitoring data become one of the regular, routinized functions of each program within the system. Any meaningful study of recidivism, for example, must be capable of following identified juveniles in each and every local agency and program. The local planning authority is vested with the responsibility to ensure that all agencies and programs institute regular, routinized measures for collecting and reporting basic data necessary for basic monitoring. This superficially simple task may well require considerable commitment, coordination, energy, and perseverance. *See Report of the Task Force, supra* at Commentary to Standard 27.3.

The standard also recommends that the evaluation process incorporate a method to allow the representatives of specific projects or programs or agencies being assessed to respond to the findings or recommendations of an evaluation. Thus, as in other aspects of the planning process, the evaluation of juvenile service activities should provide the officers from the various public and private juvenile service programs and agencies with an opportunity to be represented in decisions affecting their operations and the existing juvenile service system. *See also* Commentary to Standard 1.125.

The local planning authorities, in conjunction with the state agency, should allocate a specific percentage of financial and technical resoruces for the purpose of evaluation and should provide appropriate mechanisms and methods for distributing these resources among projects, programs and agencies. *See* Commentary to Standard 1.125.

This standard leaves it to the local planning authority, in conjunction with the state agency, to determine when, how, and to whom the findings of an evaluation should be disseminated. Usually there should be no reason to circumscribe the dissemination of program monitoring findings, so long as project or program administrators have an initial ability to respond to and—if necessary—correct evaluation results before those results are made public. This standard explicitly provides for such prepublication or predissemination response by affected programs or agencies. Digests of evaluation and monitoring reports should be made available to all interested groups and agencies providing or planning to provide similar services. Funds for the dissemination of evaluation results should be part of the evaluation budget of each program or agency. *See* Commentary to Standard 1.114.

Although monitoring reports should be available to interested citizens, the basic audience for evaluation results can be divided into two groups: project managers and policy makers. The performance monitoring discussed in this standard, which provides regular and rapid feedback about project performance, is of primary use to the project manager. Policy makers, which include the local planning authority itself, must make decisions about the development and funding of projects. As a result, policy makers rely both upon the data from performance monitoring for immediate decisions relating to program continuation, and upon results from intensive evaluation research, *see* Standard 1.32, for long-range decisions relating to the allocation of resources for similar projects. *See* Standard 1.32. *See also* CJPI, *Training Manual, supra* at 8-3.

Related Standards

1.114	Evaluation and Modification of the Local-Level Juvenile Service System Program Efforts
1.125	Evaluation of Local and State Efforts
1.134	Evaluation of Federal, State, and Local Activities
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development
1.27	Program Coordination
1.28	Program Development
1.29	Program Implementation
1.535	Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.56	Destruction of Records

1.32 Development of a Research Capability

The local planning authority described in Standard 1.111, in conjunction with the state and federal agencies described in Standards 1.121 and 1.131, should develop a research capability for the generation of knowledge relating to juvenile justice and delinquency prevention. The state and federal agencies should provide the necessary financial and technical resources to support such research.

The planning and conduct of research should proceed according to the following outline:

- **a. Identification of appropriate research problems;**
- **b. Survey of the relevant literature;**
- **c. Definition of the problem in clear and specific terms;**
- **d. Statement of underlying assumptions which govern the design of the research and interpretation of results;**
- **e. Formulation of a testable hypothesis and definition of the basic concepts and variables;**
- **f. Construction of the research design;**
- **g. Specification of the data collection procedures;**
- **h. Selection of the data analysis techniques;**
- **i. Execution of the research plan; and**
- **j. Evaluation of results and the development of conclusions.**

A mechanism should be established by each level of government to distribute, assess, and utilize the results of the research in program development and evaluation in accordance with Standards 1.28 and 1.31.

Source:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 27.1-27.3 (1976) [hereinafter cited as *Report of the Task Force*]; and H.C. Weiss, *Evaluation Research,* 1-23 (1972).

Commentary

This standard requires the development of a research capability that would focus on special research problems that deserve closer evaluation than the standard monitoring system can afford. *See Report of the Task Force, supra* at Standard 27.4 and Commentary. At least three alternative categories of research methods should be available to researchers probing such special problems. These three methods are: (1) "non-experimental" methods (e.g., surveys, case studies, and "quick" information gathering); (2) "quasi-experimental" methods (using rough comparison groups to test hypotheses); and (3) "controlled experimental" methods (a narrowly defined category, where treatment results must be rigorously compared with a control group, seeking a clear indication that the results were caused by a particular interaction). *Id.* This standard recommends the formulation of specific testable hypotheses relevant to special research problems; research planners should have freedom to select whatever methodology and research design is appropriate to the research task at hand.

When appropriate, "pilot testing" should also be used pursuant to this standard. Pilot testing is testing on a trial basis—a type of "dry run" of the proposed research design. The limited size of the sample employed in pilot testing makes data collection and analysis more manageable. *See Report of the Task Force, supra* at Commentary to Standard 27.4 The National Advisory Committee recommends that pilot testing be considered before implementation of a fullscale research design, to allow for initial testing of the research design and to indicate what results can be expected.

This standard recommends the distribution, assessment, and utilization of research results by each level of government to assist in developing and evaluating programs. *See* Standards 1.125, 1.27, and 1.31. Special research and evaluation should focus on providing the information needs of the decision maker. *Accord, Report of the Task Force, supra* at Commentary to Standard 27.4. By establishing a mechanism to distribute, assess, and utilize research data, valid research results can be absorbed or acted upon by planners and decision makers at all levels of government.

Related Standards

1.112	Development of a Local Juvenile Service Plan
1.113	Coordination, Development, and Implementation of Local Juvenile Service Programs and Guidelines
1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.122	Development of a State Juvenile Service Plan
1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.24	Needs Identification
1.25	Goal Development
1.26	Strategy Development

1.27 Program Coordination
1.28 Program Development
1.29 Program Implementation
1.31 Development of an Evaluation System

1.4 Personnel
1.41 Personnel Selection

The professional and nonprofessional staff of the family court and of all agencies providing services to juveniles subject to the jurisdiction of the family court should be selected on a merit basis and should be comprised of individuals, including minority group members and women, from a wide variety of backgrounds.

A personnel selection process and a set or sets of criteria should be developed and utilized by each of the agencies of the juvenile justice service system, to afford impartiality and objectivity in the development of job specifications and the selection of those who can best fill the job.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Probation Function,* Standard 4.1(d)(e) (draft, 1976) [hereinafter cited as IJA/ABA, *Probation Function*].

Commentary

This standard specifies a number of factors to be considered when selecting professional and nonprofessional staff for the family court and other agencies that provide services to juveniles. Among the factors to be taken into account in the personnel selection process are the backgrounds of the candidates, the merit of each candidate, and factors to assure minority group representation within the youth service system.

Each juvenile's background—and accordingly the types of attention he/she will require from the system—varies widely. The National Advisory Committee therefore recommends that persons providing services to youth should be selected from a wide variety of backgrounds. By matching up the varied backgrounds and skills of personnel with the needs of particular juveniles, the juvenile justice system will render its services more efficiently and effectively. *Cf.* IJA/ABA, *Probation Function, supra* at Standard 4.1 and Commentary.

This standard also recommends that personnel be selected on a "merit" basis. The personnel best qualified for a particular service function should be assigned to that function. Merit selection can only serve to enhance the effectiveness of the youth service system and is a hallmark of these standards. *See, e.g.*, Standards 2.253, 3.123, 3.131, 3.141, 4.2122, and 4.251.

The standard recommends that minority group members and women should be included among those serving youth. More than in other fields of employment, a particular background—including the backgrounds of minority group members and of women—is a genuine occupational qualification for staff positions serving juveniles. If a juvenile within the system comes from a particular minority background, or is female, then personnel with similar backgrounds can often be especially effective in dealing with that particular juvenile. In some cases, where a youth is predisposed to communicate or respond to persons with backgrounds similar to his/her own, a juvenile justice system which fails to provide such a staff person will not meet its most basic responsibilities to that juvenile.

This standard further recommends the development of a specific personnel selection process, including a set of criteria to be used by agencies within the juvenile justice system. Such standardized procedures and criteria should enhance impartiality and objectivity in the development of job specifications, and assist the selection of those persons best suited to do particular jobs. In addition to giving guidance for personnel selection to agencies throughout the system, a formal selection process helps prevent the fragmentation of staff energies and efforts by utilizing personnel in accord with their backgrounds, experience, training, and specific skills.

The National Advisory Committee has strongly recommended the family court should be a co-equal part of the highest court of general jurisdiction so that the quality of justice offered juveniles is at least comparable to that available to adults in civil or criminal matters. *See* Standard 3.121. The recommendations in this standard for rigorous "merit" selection of court and noncourt juveniles service personnel, together with similarly high selection standards for judges themselves, *see* Standards 3.123 and 3.122, and effective personnel training programs, *see* Standards 1.421-1.429, should assure that the family court can function effectively, as a division of the highest trial court, to serve both the juvenile and the community.

Related Standards

1.421-1.429	Personnel Training
2.253	Personnel Policies
3.121	Relationship to Other Courts
3.123	Judicial Qualifications and Selection
3.131	Representation by Counsel—For the Juvenile
3.141	Organization of Intake Units
4.2122	Staff Qualifications
4.251	Foster Homes—Staff

1.42 Training

1.421 Law Enforcement Personnel

All law enforcement officers should be provided with training on the law and procedures governing matters subject to the jurisdiction of the family court; the policies established for those matters by the local law enforcement agencies and agencies responsible for intake and protective services; the local and state groups and agencies providing services to juveniles and their families; causes of delinquency and family conflict; the most common legal problems involving youth in the local community; personal and family crisis intervention techniques; ethnic, cultural, and minority relations.

Inservice education programs should be provided to all law enforcement officers to assure that they are aware of changes in law, policy and programs. Law enforcement officers assigned to the juvenile unit of the police department or designated as patrol unit juvenile specialists should receive, in addition to the training described above, instruction on methods for controlling and preventing delinquency and family conflict, and should periodically visit programs and facilities providing services to juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report to the Task Force on Justice and Delinquency Prevention,* Standards 7.6-7.8 (1976) [hereinafter cited as *Report of the Task Force*]; and R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

This standard recommends that all law enforcement personnel be provided with preservice and inservice education programs, to assure quality police service to juveniles and to the general public, and to assure that police responses to juvenile problems are premised upon the most accurate and up-to-date sociological, legal, and factual information.

This standard specifically provides that all law enforcement personnel—whether or not they ultimately may be assigned to a police juvenile unit, *see* Standard 2.253—should be provided with both preservice and inservice training relevant to police work with juveniles and families. *Accord, Report of the Task Force, supra* at Standard 7.7 and Commentary. All police officers, even those who never specialize in youth service work, are likely to encounter and to intervene into quarrels, instances of apparent neglect, abuse, or delinquency, cases where children are estranged from their families, and instances where children are lost or endangered on the streets. *See generally* Standards 2.21-2.248. Therefore, each and every police officer needs to be informed about the family court, about the services available to juveniles, and about the special problems of juveniles and families. Accordingly, this standard explicitly provides that each law enforcement recruit should be provided with preservice training regarding family court procedures, the policies of agencies involved in the juvenile justice system, and the character of the agencies themselves, and should be instructed about the causes of delinquency and of family conflict, legal issues, intervention techniques, and ethnic, cultural, and minority relations. In addition, the standard also provides for continuing education for all police officers—again, regardless of the officers' specialty or unit assignment. Such inservice training should be designed to keep all officers up-to-date in laws, policies, and programs pertaining to juveniles.

The standard further recommends that officers who are assigned to the juvenile unit of the police department or who are juvenile specialists, *see* Standard 2.253, should receive additional inservice training about juvenile police work above and beyond the juvenile-related training which is provided to all officers. This additional inservice training for officers specializing in police work should include instruction in methods for dealing with and preventing delinquency and family conflict, and regular visits to programs and facilities which serve juveniles.

For each training program discussed above, complete cooperation between youth service agencies and law enforcement personnel is necessary to assure up-to-date training programs of high quality.

Law enforcement work directed at juveniles has traditionally been perceived by many police officers as "social work," as wholly unrelated to "real" police work, as a job for women, or as ultimately a dead end. *See Report of the Task Force, supra* at Commentary to Standard 7.6. The National Advisory Committee recommends that every effort be made to reverse completely the traditional perception of juvenile police work as an inferior job assignment. Such efforts must include (1) the establishment of stringent basic entry qualifications, *see* Standard 2.253; (2) the establishment of special selection procedures, *Id.;* and (3) the special preservice and inservice training programs recommended in this standard. With regard to basic entry qualifications, Standard 2.253 specifies that juvenile officers should be already experienced line officers with demonstrated aptitude and expressed interest in police work. Along similar lines, the Task Force has recommended that juvenile officers also exhibit above average intelligence, the desire to learn, and a basic understanding of human nature. *See Report of the Task Force, supra* at Standard 7.6 and Commentary. *See also* Commentary to Standard 2.253. The Task Force also recommends the development of a better procedural mechanism for the initial selection of juvenile officers including personal interviews in addition to written exams; a formal oral interview with a selection board composed both of police and of individuals from other juvenile service agencies; and psychological testing. *See Report of the Task Force, supra,* The National Advisory Committee concurs with these recommendations. *See* Commentary to Standard 2.253. By such selection methods, supplemented by the training programs recommended in this standard, youth service work should be raised from its current position in the "basement" of police work to the status of a demanding discipline to which experienced officers will aspire, and which requires—as it does—unusual maturity, high intelligence, and highly specialized skills and training.

This standard, in contrast to the Task Force's Standard 7.7, does not mandate the precise method of training required or the length and frequency of training. However, the National Advisory Committee recommends that each state should develop such specifics on a statewide basis to assure the same high quality training programs throughout the state. This standard is intended to encourage flexibility and experimentation by the states in the development and improvement of training programs and to permit responsiveness to special localized problems and needs.

The National Advisory Committee also encourages personnel involved in juvenile justice to pursue undergraduate and graduate studies in disciplines related to their jobs. The Committee further recommends the provision of academic leave with pay for such purposes. Such additional education can give personnel new skills and perspectives to help them serve juveniles more effectively. *Accord, Report of the Task Force,* Standard 7.8 and Commentary.

Finally, this standard provides that law enforcement officers who specialize in juvenile work should personnally visit correctional, detention, and other program facilities for juveniles on a regular basis. Similarly, the Task Force seeks to expose police officers to juvenile placement and program facilities by recommending short-term personnel exchanges among police departments and youth service agencies. *See Report of the Task Force, supra* at Standard 7.7 and Commentary. Officers responsible for dealing with youth should have firsthand knowledge about conditions in such facilities, and about the various programs available to juveniles. Such officers are frequently responsible for the initial decision to take a child into custody, *see* Standards 2.21, 2.231-2.233, and 2.242-2.243, and should have a tangible sense of what that custody decision could mean for the individual juvenile. Also, to the extent that police officers play an informal role in diverting juveniles and families in trouble away from the family court, *see, e.g.,* Standard 2.241 and Commentary, they should know the range of available diversion programs and services.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
2.251	Police Juvenile Units
2.252	Specialization Within Patrol Units
2.253	Personnel Policies
3.123	Judicial Qualifications and Selection
3.125	Employment of a Court Administrator
4.2122	Staff Qualifications
4.2192	High Security Units—Staff
4.222	Camps and Ranches—Staff
4.232	Group Homes—Staff
4.251	Foster Homes—Staff
4.262	Detention Facilities—Staff
4.27	Shelter Care Facilities

1.422 Judicial Personnel

Family court judges should be provided with preservice training on the law and procedures governing matter subject by the family court, local law enforcement agencies, and agencies responsible for intake and protective service; the local and state groups and agencies providing services to juveniles and other families; the causes of delinquency and family conflict; the methods for preventing and controlling such conduct and conflict; and the most common legal problems involving youth in the local community.

Inservice education programs should be provided to judges in the family court to assure that they are aware of changes in law, policy, and programs. In addition, each family court judge should periodically visit programs and facilities providing services to juveniles and being utilized as dispositional alternatives.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 17.1, 17.2, and 17.5 (1976) [hereinafter cited as *Report of the Task Force*]; and R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

Preservice training and inservice education programs should be provided to family court judges in accord with this standard. Other standards-setting groups and commentators have made similar recommendations. *See Report of the Task Force, supra;* and Kobetz and Bosarge, *supra.* Kobetz and Bosarge have pointed out:

> The task of a juvenile court judge is a demanding one. It requires judicial administrative skills, knowledge of psychological, sociological, and emotional problems afflicting children and their parents, and an ability to wisely determine the most suitable means by which a delinquent child can be rehabilitated. These skills and abilities . . . must be learned and acquired through education, training, and experience. Kobetz and Bosarge, *supra* at 326.

There are at least three fundamental responsibilities of juvenile court judges: (1) to protect the community; (2) to act in the best interest and for the welfare of the child; and (3) to uphold the dignity of the law and public faith in the judicial system. *See Report of the Task Force, supra* at Standard 17.1; and Kobetz and Bosarge, *supra* at 283. To insure that these rules and responsibilities are met effectively and efficiently, this standard recommends that judges receive extensive preservice and inservice training in all areas relevant to the juvenile justice system. These areas are explicitly set out in the text of this standard.

The quality of juvenile court judges has been frequently criticized. *See Report of the Task Force, supra* at Commentary to Standard 17.1. Part of this problem can be attributed to the fact that most family court judges receive training only on the job. *See Report of the Task Force, supra* at Commentary to Standard 17.2. Although such practical on-the-job training is not without some value, *see* Kobetz and Bosarge, *supra* at 311, this standard recommends that such informal training can and should be supplemented and facilitated by formal preservice training. Because of the unique combination of roles played by the family court judge, special judicial training is highly important. *Accord,* Kobetz and Bosarge, *supra* at 299; and *Report of the Task Force, supra* at Commentary to Standard 17.2.

By providing juvenile court judges with preservice training, judges will be better able to play the leadership role that is necessary to fulfill the responsibilities of the family court. *See* Kobetz and Bosarge, *supra* at 284. Also, through the contact with law enforcement agencies and other juvenile agencies recommended in this standard, the judge will be able to understand the material and psychological needs of the court organization and of the juveniles and adults who appear before the family court. *Id.* The preservice judicial training and orientation set out in this standard should be made mandatory. *Cf. Report of the Task Force, supra* at Commentary to Standard 17.2. The subject matter to be covered during preservice training should be tailored to family court concerns, and specific subject matter areas are explicitly set out in the text of this standard. The curricula suggested by the Task Force conforms to the curricula recommended here. *See Report of the Task Force, supra* at Commentary to Standard 17.2.

This standard also provides for continuing inservice education programs for judges. Such inservice education programs should focus upon relevant changes in juvenile law, policies, programs, and procedures. At least some inservice training programs should be interdisciplinary in nature, to help judges make the difficult social and psychological judgements which family court judges are so often called upon to make.

This standard, like the *Report of the Task Force,* does not specify how often judges should receive supplementary inservice training. *See Report of the Task Force, supra* at Standard 17.2 and Commentary. Kobetz and Bosarge, *supra* would require a juvenile court judge to attend an inservice training institute at least once every five years, and would have state governments establish minimum statutory requirements governing continuing education of juvenile court judges. Even though this standard does not mandate specific intervals, the National Advisory Committee believes that inservice training should be considered an integral part of the judge's responsibilities. *Accord, Report of the Task Force, supra* at Commentary to Standard 17.2. Obviously, if judges are to be aware of changes in law, policy, and program, then inservice training must be provided at regular intervals, and once every five years—as suggested by Kobetz and Bosarge, *supra*—seems too infrequent. Some formal continuing judicial education should probably occur at least once every six months. Yearly conferences with representatives from the community, the bar, and the judiciary would be another useful form of inservice training for judges. *See generally* Kobetz and Bosarge, *supra* at 284-316. Such joint conferences could also facilitate open communication among the representatives attending, and provide a forum within which family court judges could informally exercise their leadership role within the community.

This standard further provides that each family court judge should make periodic, on-site visits to correction and other facilities serving juveniles. It is the strong belief of the National Advisory Committee that only by inspecting juvenile facilities and programs for themselves can family court judges understand the impact of detention, disposition, and other judicial orders upon a juvenile. *Accord, Report of the Task Force, supra* at Standard 17.2 and Commentary; and Kobetz and Bosarge, *supra* at 320. Particularly in the case of residential correctional or inpatient mental health facilities, only personal visits can adequately inform judges whether such placements will truly be in a youth's best interest. The commonplace hearsay written or oral reports by program representatives or social workers describing such facilities are always—by their very nature—incomplete, and may be misleading. These visits by judges should occur without advance notice to the facility or program to be inspected.

Unlike the *Report of the Task Force, supra* at Standard 17.5, this standard does not specifically recommend that nonjudicial court support personnel be directly involved in training programs for judicial personnel. Such involvement is not critical. The National Advisory Committee does recommend, however, that there should be a constant flow and interchange of information and ideas between family court judges and court support staff at all levels. *See Report of the Task Force, supra* at Standard 17.5 and Commentary.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
2.251	Police Juvenile Units
2.252	Specialization Within Patrol Units
2.253	Personnel Policies
3.123	Judicial Qualifications and Selection
3.125	Employment of a Court Administrator
4.2122	Staff Qualifications
4.2192	High Security Units—Staff
4.222	Camps and Ranches—Staff
4.232	Group Homes—Staff
4.251	Foster Homes—Staff
4.262	Detention Facilities—Staff
4.27	Shelter Care Facilities

1.423 Prosecutorial Personnel

All attorneys assigned to the staff of a prosecutor's office should be provided preservice training on the law and procedure governing matters subject to the jurisdiction of the family court; the policies established for these matters by the family court, local law enforcement agencies, and the agencies responsible for intake and protective services; the local and state groups and agencies providing services to juveniles and their families; the causes of delinquency and family conflict; and the most common legal problems involving youth in the local community.

Inservice education programs should be provided to all attorneys in the prosecutors' offices to assure that they are aware of changes in law, policy, and programs. Attorneys assigned to the family court section of the prosecutor's office should receive instruction on the methods for controlling and preventing delinquency, and family conflict in addition to the training described above, and should periodically visit programs and facilities providing services to juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 15.6 (1976) [hereinafter cited as *Report of the Task Force*]; and R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

Until 1967 and the decision of the Supreme Court *In re Gault,* 387 U.S. 1 (1976), the prosecutorial role in family court proceedings was not a prominent one. Today, however, the juvenile justice system requires fulltime prosecutors to help insure that the rights of respondents and of the community are protected at all stages. *See* Kobetz and Bosarge, *supra* at 270-271. This standard recommends that prosecuting attorneys—including prosecutors not assigned to the family court section of the prosecutor's office—be provided with both preservice and inservice training and education about the family court, its practices and procedures, and about the problems it seeks to address. This standard is one component of a comprehensive system of training for all personnel working within the juvenile justice system. *See* Standards 1.421, 1.422, and 1.424-1.429.

Preservice training is particularly important in the prosecutorial area because of the highly specialized nature of juvenile law and practice. *See Report of the Task Force, supra* at Standard 15.6 and Commentary. Training is also important due to the complexity of the juvenile prosecutor's dual role. The prosecutor must not only function as the community protector against delinquency, but must simultaneously protect the rights of accused juveniles and act in a manner which is consistent with fundamental fairness. *See* Kobetz and Bosarge, *supra* at 270. The preservice training provided in this standard would enhance the overall effectiveness of the juvenile justice system by making all prosecuting attorneys aware of the special concerns and needs of the juvenile and of the family court. The recommended inservice training is intended primarily to insure that all prosecutors are aware of new developments in the specialized area of family and juvenile law. This standard specifies the subject matter areas which should be covered during preservice and inservice training.

The training and education required in this standard should include at least some multi-disciplinary training. *Accord, e.g., Report of the Task Force, supra* at Standard 15.6. Prosecutors of juveniles, like family court judges and defense attorneys, *see* Standards 1.422 and 1.424, need basic psychological, sociological, and cultural information and training in order to evaluate "expert" assessments about the needs of various juveniles and about the value of placement and treatment alternatives. Moreover, the family court prosecutor needs to develop a working relationship with other agencies in the juvenile justice system. *See* Kobetz and Bosarge, *supra* at 272. This standard, therefore, contemplates that the various juvenile service agencies should contribute to and participate in the preservice and inservice prosecutor's training programs. Reciprocally, family court prosecutors should assist in preparing and presenting the police training programs recommended in Standard 1.421. *Accord,* Kobetz and Bosarge, *supra* at 273. Prosecutors' offices should also seek funding for attendance at relevant outside multi-disciplinary training programs to supplement the "within house" training established by this standard. *See* Kobetz and Bosarge, *supra* at 273.

This standard would also require that those prosecutors who are assigned to the family court section of the prosecutor's office periodically visit programs and facilities which provide the services to juveniles. *Accord, e.g., Report of the Task Force, supra* at Standard 15.6. Such periodic visits would permit family court prosecutors to determine the kind and quality of the care and rehabilitation available in various placements, programs, and institutions serving juveniles. Only with this kind of personal, firsthand knowledge of placement facilities and programs can prosecutors make intelligent placement and dispositional recommendations. These visits, like the similar visits by judges and legal services personnel recommended in Standards 1.422 and 1.424, should preferably occur without advance notice to the facility being visited.

Nonprofessional staff persons in the prosecutor's office should also be educated about alternative procedures and techniques for dealing with juveniles with whom they come into contact. This training of nonprofessional staff could be provided either jointly, along with the training provided to staff attorneys, or otherwise. Since both professional and nonprofessional members must work together closely to contribute to the overall effectiveness of the family court prosecutor, at least some joint training programs involving both professionals and nonprofessionals might enhance coordination and cooperation among all staff members. *Accord, Report of the Task Force, supra* at Standard 15.6; and Kobetz and Bosarge, *supra* at 272-273. For both professional and nonprofessional staff, the training recommended here can help convey the overall importance of properly performed duties, and can lead to greater job satisfaction and efficiency. *See Report of the Task Force, supra* at Commentary to Standard 15.6.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
1.421	Training—Law Enforcement Personnel
1.422	Training—Judicial Personnel
1.424	Training—Legal Services Personnel
1.425	Training—Personnel Providing Direct Services to Juveniles
1.426	Training—Educational Personnel
1.427	Training—Planning Personnel
1.428	Training—Personnel Providing Support Services in Residential Programs
1.429	Training—Administrative Personnel
2.251	Police Juvenile Units
2.252	Specialization Within Patrol Units
2.253	Personnel Policies
4.2122	Training Schools—Staff Qualifications
4.2192	High Security Units—Staff
4.222	Camps and Ranches—Staff
4.232	Group Homes—Staff
4.251	Foster Homes—Staff
4.262	Detention Facilities—Staff
4.27	Shelter Care Facilities

1.424 Legal Services Personnel

Attorneys on the staff of public defender agencies, or who are regularly appointed to represent persons unable to retain counsel for themselves, should be provided with preservice training on the law and procedures governing matters subject to the jurisdiction of the family court; the policies established for those matters by the family court; local law enforcement agencies and the agencies responsible for intake and protective services; the local and state groups and agencies providing services to juveniles and their families; the causes of delinquency and family conflict and the most common legal problems involving youth in the local community.

Inservice education programs should be provided to attorneys on the staff of public defender agencies and made available to attorneys in private practice to assure that they are aware of changes in law, policy, and programs. Attorneys assigned to the family court section of a public defender agency or who are regularly appointed to represent juveniles should receive instruction on methods for controlling and preventing delinquency and family conflicts in addition to the training described above, and should periodically visit programs and facilities providing services to juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 16.8 (1976) [hereinafter cited as *Report of the Task Force*]; and R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973).

Commentary

The Supreme Court Decision of *In re Gault,* 387 U.S. 1 (1967), extended the constitutional right to counsel to juveniles accused of delinquency. Although many states had instituted systems to guarantee legal representation to juveniles even prior to *Gault, see* Commentary to Standard 3.132, the *Gault* decision created a nationwide need for attorneys trained and proficient in the specialized task of representing juveniles.

This standard recommends that legal services personnel should be provided with preservice and inservice education programs. By "legal services personnel," this standard refers to attorneys who regularly represent juveniles, including both attorneys on the staff of public defender agencies and private attorneys who are regularly appointed to represent persons unable to retain counsel for themselves.

The presence of a competent, independent legal representative for the child (and, in neglect and abuse cases, also for persons accused of neglect or abuse) is necessary to guarantee rudimentary due process to parties who are called before the family court. Effective legal representation is the keystone of every other procedural mechanism designed to assure fundamentally fair proceedings. *See generally In re Gault. See also The Challenge of Crime in a Free Society,* 86 (1967). Nonetheless, fully thirteen years after the *Gault* decision, there remains a shortage of competent attorneys with training or substantial experience representing juveniles. *See Report of the Task Force, supra* at Standard 16.8 and Commentary. It should be noted that both the public defender model for providing legal counsel to juveniles, and the volunteer privately appointed counsel model, have their advantages and disadvantages. The volunteer system can vary widely in the quality of representation afforded to any particular juvenile. *See* Kobetz and Bosarge, *supra* at 274-282. On balance, the public defender model is the better system, because public defenders are available from the earliest possible moment, *see* Standard 3.132 and Commentary, and because the defense provided by a trained public defender is usually better than that provided by an appointed private attorney who may have no experience or genuine interest in representing juveniles. *Id.* The early availability of public defender representation is particularly advantageous under the representation scheme set up by these standards, which recommend that the right to counsel should attach at the earliest possible moment—including immediately after a juvenile is taken into custody, and at intake. *See* Standard 3.132. Nonetheless, the National Advisory Committee felt that it would be unrealistic to recommend a single inflexible representation scheme for all states and localities. These standards, therefore, leave the states free to experiment with public defender, volunteer, and mixed forms of representation for persons called before the family court. These standards recommend formal preservice and inservice training for private counsel who are regularly appointed, at state expense, to represent juveniles and other parties in family court, as well as for fulltime public defenders.

The text of this standard specifies what matters should, at a minimum, be addressed during the recommended inservice and preservice training programs. Inservice training should include training about the causes of delinquency and of family conflict; about the common legal problems of juveniles; about the laws, procedures, and policies relevant to the family court; and about the nature, policies, and procedures of all agencies dealing with juveniles, including local law enforcement, intake, and protective service agencies.

Inservice education programs should include the dissemination of new and current information about family and juvenile law, and family court procedures; about the policies of juvenile service agencies; about placement and dispositional alternatives; about new techniques and procedures to be followed to establish the client's eligibility for various programs; and about the various statutory and other mechanisms available for funding special programs and services for individual juveniles, e.g., special educational programs. *See generally Report of the Task Force, supra* at Standard 16.8 and Commentary; and Kobetz and Bosarge, *supra* at 282. Given the speed with which critical laws and policies can change, the recommendation of Kobetz and Bosarge that such inservice training programs should be held at least annually is a practical one, and should be carefully considered in determining the frequency of the inservice education recommended by this standard. *See* Kobetz and Bosarge, *supra* at 282.

Much of the specialized training most desperately needed by attorneys representing juveniles is multi-disciplinary in character, and the training programs recommended by this standard should include such training. *Accord,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Counsel for Private Parties,* Commentary to Standard 2.1(a) (tentative draft, 1976) [hereinafter cited as IJA/ABA, *Counsel for Private Parties*]. For example, many juvenile attorneys could benefit from the experience and advice of psychologists or psychiatrists in how best to go about the sensitive tasks of interviewing juvenile clients and examining such clients on the witness stand. *See generally* H. Freeman & H. Weihofen, *Clinical Law Training,* 458-463 (1972); and R. Cipes, *Criminal Defense Techniques,* Sections 60.06[3] and [4] (1974). Attorneys should also be able to recognize and deal with the special problems of their juvenile clients. *Accord, Report of the Task Force, supra* at Standard 16.8 and Commentary. Juveniles' attorneys should also be trained in how to construct placement and dispositional plans for clients and in how to evaluate and, if necessary, critique alternative dispositional proposals presented by prosecutors or social workers. *See* e.g., IJA/ABA, *Counsel for Private Parties, supra* at Commentaries to Standards 1.4 and 2.1(a). Accordingly, this standard specifically requires that attorneys who represent juveniles should make periodic visits to programs and facilities providing services to juveniles. *See* Commentaries to Standards 1.421-1.423.

Attorneys representing juveniles must also become intimately acquainted with the eligibility requirements and procedures for all juvenile rehabilitation and training programs, including special educational programs, and should know the relevant state and federal statutes by which public funding for such programs may be made available. *See, e.g.,* the Education for All Handicapped Children Act, Pub. L. No. 94-142, (codified at 20 U.S.C. §1401, *et. seq.*); and the Civil Rights Act for Handicapped Persons, §504 of the Rehabilitation Act of 1973, (codified at 29 U.S.C. §794). As noted above, since the prerequisites and procedures for such programs change frequently, inservice education for legal services personnel must include the sharing and dissemination of up-to-date information about such laws and programs. Both the inservice and preservice training recommended here should include discussions and other training about the role of the attorney representing a juvenile. Special training is particularly necessary in how to go about representing the very young client, and about the participation, if any, of guardians *ad litem. See* Standards 3.134 and 3.169. *See also Report of the Task Force, supra* at Commentary to Standard 16.8. Attorneys should receive education and information to help them to formulate and evaluate longrange plans which may be proposed for the very young client.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
1.421	Training—Law Enforcement Personnel
1.423	Training—Prosecutorial Personnel
1.425	Training—Personnel Providing Direct Service to Juveniles
1.426	Training—Educational Personnel
1.427	Training—Planning Personnel
1.428	Training—Personnel Providing Support Services in Residential Programs
1.429	Training—Administrative Personnel
2.251	Police Juvenile Units
2.252	Specialization Within Patrol Units
2.253	Personnel Policies
4.2122	Training Schools—Staff Qualifications
4.2192	High Security Units—Staff
4.222	Camps and Ranches—Staff
4.232	Group Homes—Staff
4.251	Foster Homes—Staff
4.262	Detention Facilities—Staff
4.27	Shelter Care Facilities

1.425 Personnel Providing Direct Services to Juveniles

All personnel providing direct services to juveniles subject to the jurisdiction of the family court should be provided with preservice training on the law and procedures governing matters subject to the jurisdiction of the family court; departmental policies; rights of adjudicated juveniles; supervision and security requirements; ethnic, cultural, and minority relations; crisis intervention techniques; background and needs of the client population; and causes and treatment of delinquency and family conflict.

Inservice education should be provided to all supervisory personnel to assure that they are aware of changes in law, policy, and programs; new information relating to the causes and treatment of delinquency and family conflict; the local and state groups and agencies providing services to juveniles and their families; ongoing problems faced by supervisory personnel and methods of resolution; preparation for new tasks and program settings; and periodic visits to programs and facilities providing services to juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 19.10 (1976) [hereinafter cited as *Report of the Task Force*]; and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Correctional Administration,* Standard 3.3 (draft, 1976) [hereinafter cited as IJA/ABA, *Correctional Administration*].

Commentary

This standard recommends that preservice and inservice education programs be developed for personnel providing direct services to juveniles. The National Advisory Committee, in recommending such educational programs, recognizes the importance of insuring that juveniles coming into contact with the system are encountered by personnel who are familiar with juveniles' special problems and characteristics. Such personnel should also be knowledgeable about the court and service system within which the juvenile client has become enmeshed. As the National Advisory Committee aptly observed in 1973, a "lack of staff development reflects an attitude of indifference about the services that staff provide to the clients of the system." National Advisory Committee on Crimminal Justice Standards and Goals, *Corrections,* 469 (1973). The development of thorough pre- and inservice education programs to provide juvenile justice personnel with a clear sense of the purposes of the total juvenile justice system should minimize "attitudes and indifference" among staff, and should enhance the provision of services to juveniles.

The specifics of the training programs which are explicitly set out in this standard stress developing the competencies of service personnel to deal effectively with juveniles. Staff ability to interact directly with juveniles and to direct their immediate problems should be enhanced by the provisions in this standard for training about ethnic, cultural, and minority relations; about crisis intervention techniques; about the backgrounds and needs of the client population; and about the causes and treatment of delinquency and family conflict.

The ability of staff to intercede effectively on behalf of their clients before the court will be strengthened by the training required here about the law and procedures of the family court, and by inservice education about changes in pertinent law, policy, and programs. Other standards specifically require that persons directly serving juveniles must act aggressively to bring deficiencies in services to the attention of the family court.

This standard further provides for initial and continuing education about departmental agency policies, about the rights of adjudicated juveniles, and about all local and state groups and agencies providing services to juveniles and their families. This training should equip staff with the technical wherewithal to assure that no adjudicated juvenile goes without helpful and supportive services merely for lack of staff familiarity with the full range of services available to that juvenile at the local, state, and federal levels, and from private community resources. Staff persons should be made intimately familiar with state and federal laws which might directly provide—or financially underwrite—special services to juveniles. *See, e.g.,* Pub. L. 94-142, (codified at 20 U.S.C. 1401 *et seq.*).

This standard further provides that persons providing direct services to juveniles should periodically visit other programs and facilities providing services to juveniles. These visits would provide "intramural" exposure to other programs serving juveniles within the region or state. Facility or program staff could thus acquire and share ideas about new or otherwise special programs or approaches which might be adopted to benefit juveniles. Such cross-fertilization should maximize the possibilities for flexible, creative approaches to providing direct services to youth.

The primary difference between this standard and those of the American Bar Association and the Task Force is that the latter groups specifically require at least eighty hours of preservice training and set additional minima for inservice training. *See Report of the Task Force, supra* at Standard 19.10; and, IJA/ABA, *Correctional Administration, supra* at Standard 3.3. For example, the IJA/ABA Joint Commission would require forty-eight hours of training within the first six months of an individual's employment. *See* IJA/ABA *Correctional Administration, supra* at Standard 3.3 and Commentary. This standard does not mandate a specific minimum number of training hours. The absence here of specific minimum training-hour requirements is intended to permit flexibility within the centralized state system to set rational priorities with respect to personnel training. However, the National Advisory Committee recommends that the IJA/ABA, *Corrections Administration, supra* and *The Report of the Task Force, supra* requirements should serve as guidelines to administrators to determining the specific number of training hours necessary for specific staff positions.

This standard contemplates that the establishment and direction of staff training programs should be the ultimate responsibility of the centralized statewide juvenile service agency. *See* Standard 1.121 and Commentary. *Accord, Report of the Task Force, supra;* and IJA/ABA, *Correctional Administration, supra.* Such centralization is a focal point of these standards. The centralized agency must insure that adequate training resources and staff time are made available to meet the preservice and inservice training requirements established here. *See* Standard 1.121 and Commentary; and IJA/ABA, *Correctional Administration, supra* at Commentary to Standard 3.3.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
1.41	Personnel Selection
1.42	Training
1.421	Law Enforcement Personnel
1.422	Judicial Personnel
1.423	Prosecutorial Personnel
1.424	Legal Services Personnel
1.426	Educational Personnel
1.427	Planning Personnel
1.428	Personnel Providing Support Services in Residential Programs
1.429	Administrative Personnel
2.251	Police Juvenile Units
2.252	Specialization Within Patrol Units
2.253	Personnel Policies
3.123	Judicial Qualifications and Selection
3.125	Employment of a Court Administrator
4.2122	Staff Qualifications
4.2192	High Security Juvenile Units—Staff
4.222	Camps and Ranches—Staff
4.232	Group Homes—Staff
4.252	Foster Homes—Services
4.262	Detention Facilities—Staff
4.27	Shelter Care Facility

1.426 Educational Personnel

All teaching and school-based social service support personnel should be provided with preservice training on the law and procedures governing matters subject to the jurisdiction of the family court; local and state groups and agencies providing services to juveniles and their families; causes of delinquency and family conflict; the most common educational problems involving youth in the local community; personal and family crisis intervention techniques; ethnic and cultural and minority relations within the community; and the types, causes, and methods of handling disruptive behavior and poor performance in the classroom.

Inservice education programs should be provided to all educational personnel to assure that they are aware of changes in law and educational policies and programs as well as the current findings regarding specialized educational processes to assist troubled youth. Educational personnel should periodically visit programs and facilities providing services to troubled youths.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 3.18 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard seeks to provide teachers with programs that will give them relevant "real world" information for and about juveniles to be incorporated into the teaching process. The White House Conference on Children has reported:

> The school is second only to the parents in influencing a child's character and personality, in preparing him to live in and with his environment, and in determining what kind of an adolescent he will become . . . *There must be relevance between what is taught and how the child lives and his projected way of life.* The White House Conference on children, *Report to the President,* 394 (1971) [hereinafter cited as *Report to the President*] (emphasis added).

The training recommended in this standard is intended to assist the teacher in bringing home to his/her students how their schooling is—or can be—personally meaningful to them, as well as to inform teachers about some of the special problems of juveniles, including the problem of juvenile delinquency. Since students' personal, social, and legal problems can intrude into the classroom and frustrate learning, teachers inevitably become involved in such problems. *See Report to the President, supra.* The training recommended in this standard should also help teachers minimize disruptions of the learning process and to more effectively counsel troubled students.

The preservice training recommended here will assist teachers in identifying and dealing with juveniles who are currently or who may become involved with the juvenile justice system. "[A] teacher may be supportive and lead the student toward solutions; or they may compound problems by responding inappropriately." *Report of the Task Force, supra* at Standard 3.18 and Commentary. In order to prevent inappropriate responses by teachers to student problems, the text of this standard specifies broad categories of valuable information for inclusion in preservice teacher training. The information provided should also help teachers to identify, anticipate, and prevent student delinquency problems—hopefully before the delinquent act occurs.

The inservice programs required here should help assure teacher awareness of new developments in educational policies and programs, and of special programs to assist juveniles with particular problems.

Educational personnel should also be encouraged to visit diverse programs and facilities other than school-based programs to inform them of the range of possible solutions to particular problems. If contact is made between teacher and student about a problem, a teacher's inability to suggest alternatives could lead to feelings of frustration on the part of the student; in effect, all the teacher's preservice training and background are of little help in guiding the student if no real alternatives can be devised to help the youth. Both inservice teacher training, and teacher visits to various special nonschool programs, should suggest alternative solutions to student problems. The teacher could then choose to meet the problem either by creating new or ad hoc school programs, or through student participation in an existing off-campus program.

Both formal training programs and visits to nonschool facilities can help minimize misdiagnosis by teachers of student problems. It will not help a student if an organic learning disability is diagnosed as an "attitude" problem. This standard specifically provides for continuing education of teachers about new findings and methods of special education, and about changes in law and educational policies and programs. The "legal" component of such continuing teacher education should include special training with regard to eligibility for obtaining student access into suitable special educational programs—including training about the purposes and requirements of relevant statutes, including federal statutes such as the Education for All Handicapped Children Act and the Civil Rights Act for Handicapped Persons, as well as any pertinent state statutes. *See* Public Law 94-142 (codified at 20 U.S.C. §1401, *et. seq.*)(1975); and Section 504 of the Rehabilitation Act of 1973 (codified at 29 U.S.C. §794)(1973).

Related Standards

1.111 Organization of the Local Juvenile Service System
1.121 Organization of the State Juvenile Service System
2.251 Police Juvenile Units
2.252 Specialization Within Patrol Units
2.253 Personnel Policies
3.123 Judicial Qualifications and Selection
3.125 Employment of a Court Administrator
4.2122 Training Schools—Staff Qualifications
4.2192 High Security Units—Staff
4.222 Camps and Ranches—Staff
4.232 Group Homes—Staff
4.251 Foster Homes—Staff
4.262 Detention Facilities—Staff
4.27 Shelter Care Facilities

1.427 Planning Personnel

All planning personnel working with the juvenile service system should be provided with training on the law and procedures governing matters subject to the jurisdiction of the family court and the policies established for those of the family court and the policies established for those matters by the local law enforcement agencies and agencies responsible for intake and protective services; the local and state groups and agencies providing services to juveniles and their families; causes of delinquency and family conflict; the most common legal problems involving youth in the local community; and particular planning methods, procedures, and activities unique to the organization and community.

Inservice education programs should be provided to all planning personnel to assure that they are aware of changes in the law, policy, and programs of the state and local community; preparation for new tasks and program settings; periodic visits to programs and facilities providing services to youth; community organization; proposal and grant development; new methods and findings in juvenile service planning, research, evaluation, coordination, and dissemination of information to the public.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 2.2 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard recommends that planning personnel within the juvenile justice system should be provided with preservice training and with inservice education programs. Existing programs have been developed by planners in accord with existing laws, policies, procedures, and other factors. Planners must be told when such factors change so that programs will conform to new laws, policies, etc., and so that programs will be relevant to the current goals of the juvenile justice system. The training programs recommended by this standard must therefore provide a continuous, systematic means of conveying current relevant information to program planners.

Since planners plan for people, planning cannot and should not go on in an ivory tower. Planners should know as much as possible about the people and the systems for which they plan. Accordingly, this standard provides planners with mechanisms for achieving and maintaining a broad prespective about community opinions, resources, and programs. *Accord, Report of the Task Force, supra* at Commentary to Standard 2.2. Planners need current information about local and state groups and agencies providing services to juveniles, about changes in policy, about state, local, public, and private programs, about community organizations, about the common legal problems of juveniles in localities for which they plan, and about planning methods, procedures, and research. This standard specifically requires both preservice and inservice training and education for planners in each of these areas.

The collection of the information which this standard recommends should be conveyed to planners will inevitably bring planners into direct contact with diverse groups within the community. Under this standard, planners must keep in constant touch with all segments of the community, both to update and assimilate the information to be taught in formal planner training programs, and during periodic visits by planners to programs and facilities which serve youth. This constant interchange and contact by planners with the community will permit planners to act "not only as professional planners but also as facilitators and coordinators of community prevention efforts." *Report of the Task Force, supra* at Commentary to Standard 2.2. Through this process, planning personnel can and must maintain continuous contact with the system and the people for whom they plan.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
2.251	Police Juvenile Units
2.252	Specialization Within Patrol Units
2.253	Personnel Policies
3.123	Judicial Qualifications and Selection
3.125	Employment of a Court Administrator
4.1222	Training Schools—Staff Qualifications
4.2192	High Security Units—Staff
4.222	Camps and Ranches—Staff
4.232	Group Homes—Staff
4.251	Foster Homes—Staff
4.262	Detention Facilties—Staff
4.27	Shelter Care Facilities

1.428 Personnel Providing Support Services in Residential Programs

All personnel responsible for providing support services in residential programs such as ground and building maintenance, laundry, and meal preparation, should be provided with preservice and inservice training on the law and procedures governing matters subject to the jurisdiction of the family court; causes of delinquency and family conflict; crisis intervention techiques; the backgroud and needs of the client population; ethnic, cultural, and minority relations, and supervision and security requirements.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 19.10 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Assiciation Joint Commission on Juvenile Justice Standards, *Standards Relating to Correctional Administration,* Standard 3.3 (draft, 1976) [hereinafter cited as IJA/ABA, *Correctional Administration*].

Commentary

Support personnel play as important a role as personnel providing direct services to juveniles in residential programs. The National Advisory Committee has achnowledged the importance of support staff in adopting this standard which provides specific training for such personnel. Recognizing that support personnel have close and frequent contact with juveniles in residential programs, the National Advisory Committee's recommendation should further the consistency of purpose and of philosophical approach among all staff working in residential facilities. This standard should also enhance the quality and effectiveness of support personnel in residential programs.

Support persons enjoy at least as much contact with juvenile residents as do teachers, childcare workers, and other direct service providers. *Cf.* Standard 1.425. The role modeling provided by ground maintenance persons, building janitors, cooks, and other support staff may be more familiar to some juveniles, and more akin to some juveniles' expectations for their own social and economic futures than the role modeling provided by professional teachers, psychologists, and others who offer more direct services to youth. *See* Standard 1.425. The impact of support staff contact upon residents' behavior and personal growth may be more tangible and effective in many cases than the impact of personnel who provide teaching, psychiatric, childcare, and other more direct services. Some juveniles may, for example, confide more readily in support staff than in their more judgemental teachers or therapists. For these reasons, it is imperative that support staff be aware of the backgrounds and needs of the client population, of the philosophy and goals of the total Juvenile Justice System, and of the specific treatment approaches (if any) used in the particular facility where they are employed.

Preservice training will provide support staff with a general introduction to the field and to the role and goals of the state's Youth Servies Agency. *See Report of the Task Force, supra* at Standard 19.10 and Commentary. This formal initiation may prevent conflicts that individual support staff members who are unfamiliar with the juvenile service system might otherwise initially encounter with the philosophy and objectives of the centralized youth service agency.

Inservice training is also recommended here. Such training should be tailored to assist employees further define and achieve their professional objectives and convey information about any changes in the system that might affect their role or the juvenile clients to whom they provide services. *See Report of the Task Force, supra.*

Through pre- and inservice training programs, support personnel will become a more integral part of the juvenile service system. Traditionally taking a spectator's view of the system, support personnel will gain perspective about the juvenile system and insight into the needs of juveniles.

Because support staff and persons more directly serving juveniles often must work together closely, training topics which are pertinent to such personnel groups might best be taught to both groups jointly to enhance communication and cohesiveness among all personnel serving in residential programs. Because all staff contribute alike to the total effectiveness of any residential program, some joint training should provide greater staff cohesion and effectiveness. To convey how each person's role fits into the overall goal of a residential program and of the total youth service system enhances coordination, cohesiveness, and job satisifaction among both professional and nonprofessional staff.

Related Standards

1.111 Organization of the Local Juvenile Service System
1.121 Organization of the State Juvenile Service System
1.41 Personnel Selection
1.42 Training
1.425 Personnel Providing Direct Services to Juveniles
1.426 Educational Personnel
2.251 Police Juvenile Units
2.252 Specialization Within Patrol Units
2.253 Personnel Policies
3.123 Judicial Qualifications and Selection
3.125 Employment of a Court Administrator
4.2122 Staff Qualifications
4.2172 Responsibility Toward Patients
4.2192 High Security Juvenile Units—Staff
4.222 Camps and Ranches —Staff
4.232 Group Homes—Staff
4.252 Foster Homes—Services
4.262 Detention Facilities—Staff
4.27 Shelter Care Facility

1.429 Administrative Personnel

All administrative personnel responsible for the management of juvenile services should be provided with preservice and inservice training, appropriate with their responsibilities, on budget preparation, fiscal records, personnel management, supervision, training, procurement, space and facilities management, planning, research, evaluation, coordination, community organization, and the dissemination of information to the public. Instruction should also include training in the law and procedures governing matters subject to the jurisdiction of the family court over deliquency, noncriminal misbehavior, those matters by the local law enforcement, intake, protective service, and supervisory agencies responsible for providing services to juveniles and their families; causes of delinquency and family conflict; crisis intervention techniques; and the most common legal problems involving youth in the local community. Administrative personnel should periodically visit programs and facilities providing services to juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 19.10 (1976) [hereinafter cited as *Report of the Task Force.*]

Commentary

Administrative personnel play an important role in maintaining the continuity, consistency, and effectiveness of the agencies and services provided within the juvenile service system. Administrators managing service programs are vital to the effectiveness of these programs. Administrators must, therefore, always have complete and current information about the policies and procedures at each level of the juvenile service system, and about all other information pertinent to effective program administration. This standard recommends the development of a systematic training effort designed to educate and "up-date" administrators about such matters.

The scope of the pre- and inservice training recommended by this standard is extensive, and should enable administrators to be aware of new developments that may affect the administration and effectiveness of programs. The breadth of the pre- and inservice training recommended here should assure that juvenile service program administrators will be well trained and well informed.

Administrators of youth service programs should receive broad-based training in the law and procedures of the family court, about the relevant policies of pertinent agencies, including local law enforcement, intake, protective service, and other supervisory agencies; about the common legal problems of youths; about the causes of delinquency and family problems; and in crisis intervention techniques.

In addition, administrators must know how to prepare and present budget requests, how to maintain physical records and conduct audits, and how to hire, train, and supervise personnel. Administrators should also be taught at least enough about planning, research, evaluation, and program coordination, to enable them to communicate effectively with program planners, researchers, and evaluators, and to coordinate efforts among related programs. To enable administrators to coordinate most effectively with other programs, and to facilitate and create cross-fertilization of ideas and approaches among administrators of different programs, the standard provides that administrative personnel should periodically visit the programs and facilities providing services to juveniles.

Administrative personnel should also be trained in how to communicate effectively with community groups, members of the press, and individuals from the community. Many residential programs for youth have been halted or driven away by intense opposition to such programs from within the community. Under the worst of circumstances, youth program administrators should know something about how to defuse, deflect, or discourage community opposition to a residential youth facility. Under better circumstances, an administrator should know how to organize and galvanize community support behind new or additional youth services programs or facilities. Along these lines, this standard specifically provides that youth program administrators must be trained formally both in community organization techniques and in how to disseminate information to the public.

The Task Force, unlike this standard, mandates a specific number, (forty) of inservice training hours for administrative personnel before or within their first year of employment. *See Report of the Task Force, supra.* Although the National Advisory Committee wishes to allow flexibility for state and local adoption of reasonable minimum training hours, the forty-hour preservice training minimum suggested by the Task Force should be closely considered in establishing minimum hourly training requirements.

Related Standards

1.111 Organization of the Local Juvenile Service System
1.121 Organization of the State Juvenile Service System

2.251 Police Juvenile Units
2.252 Specialization Within Patrol Units
2.253 Personnel Policies
3.123 Judicial Qualifications and Selection
4.2122 Staff Qualifications
4.2192 High Security Units—Staff
4.222 Camps and Ranches—Staff
4.232 Group Homes—Staff
4.252 Foster Homes—Services
4.262 Detention Facilities—Staff
4.27 Shelter Care Facilities
1.41 Personnel Selection
1.42 Training
1.421 Law Enforcement Personnel
1.422 Judicial Personnel
1.423 Prosecutorial Personnel
1.424 Legal Services Personnel
1.425 Personnel Providing Direct Services to Juveniles
1.426 Educational Personnel
1.427 Planning Personnel
1.428 Personnel Providing Support Services in Residential Programs
3.125 Employment of a Court Administrator

1.5 Records Pertaining to Juveniles

1.51 Security and Privacy of Records

Each state and the Federal Government should enact statutes governing the collection, retention, disclosure, sealing, and destruction of records pertaining to juveniles to assure the accuracy and security of such records and to protect against the misuse, misinterpretation, and improper dissemination of the information contained therein.

Recordkeeping practices should be reviewed periodically to determine whether the information collected is necessary and whether it is being gathered, retained, utilized, and disseminated properly. Privacy councils should be established at the state and federal levels to assist in this review and in the enforcement of the statutes and regulations governing records pertaining to juveniles.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 28.1 and 28.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 2.1, 2.2, 11.1, 11.2, and 19.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; *See also* Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information,* §§1.1-1.3, and 21 (1975); National Advisory Committee on Criminal Justice Standards and Goals, *Criminal Justice System,* §8.1 (1973) [hereinafter cited as *Criminal Justice System*].

Commentary

As recordkeeping methods have become increasingly numerous and sophisticated, there has been growing concern over the unnecessary stigmatization caused by the maintenance of the records of a person's childhood mistakes for decades after that person has reached adulthood, as well as over the accuracy, use, and misuse of data concerning juveniles and their families collected by private and public agencies. The various federal privacy statutes and regulations seek to identify recordkeeping systems, assure access by the subject of a record to the information contained therein, limit access by others, and provide procedures for correcting and updating records. However, except for records maintained by schools, the impact of these provisions on juveniles subject to the jurisdiction of state family courts is quite limited. *See* 20 U.S.C. §1232(g) (Supp. 1976); 45 C.F.R. §§99.1(a) and 99.3 (1976). For example, the Federal Privacy Act governs only identifiable information maintained by federal agencies, 5 U.S.C. §552a (Supp. 1976). The LEAA regulations on Criminal Justice Information Systems include records pertaining to juveniles only to the extent of requiring that state criminal justice history record information plans assure that juvenile records arising from delinquency and noncriminal misbehavior proceedings are not disseminated to noncriminal justice agencies except (a) when authorized by statute, executive order, or court rule or order; (b) for administrative purposes; or (c) for research, evaluative, or statistical activities. 28 C.F.R. §§20.21(b) and (d) (1976).

As for the states, one commentator has observed that while "most states have laws which serve as a general declaration that persons should not be denied opportunities based upon a juvenile record . . . [they] do not have laws specific enough to assure that the general legislative purpose is achieved." Altman, "Juvenile Information Systems: A Comparative Analysis," appearing in L. Boxerman, *Computer Applications in Juvenile Court,* 1, 9 (1974).

> First, there are no laws defining the purposes for which information may legitimately be collected and utilized . . . Second, there are no laws establishing any quality controls with regard to practices of collecting and using information . . . Third, there are no laws which presently recognize that a juvenile court's thirst for information should be weighed against a juvenile's right and need for privacy. This means that the juvenile justice system assumes that once it obtains jurisdiction over a child it may collect any and all information, no matter how "private" that information may be, no matter whether that information is only marginally relevant to a particular decision, and no matter how limited the scope of that decision may be . . . *Id.* at 5.

This standard urges that the federal and state governments enact comprehensive legislation to improve the quality and consistency of data-gathering and recordkeeping practices, and to protect the privacy of children and their families. It is intended to refer to recrods relating to children maintained by educational and social welfare departments as well as by juvenile and criminal justice agencies, and to handwritten or typed records as well as to those on tape, computer cards, microfilm, or microfiche. Many of the features of such legislation are discussed in the remaining standards in this series.

The provision then recommends that recordkeeping practices should be subject to periodic review to assure compliance with the letter and the spirit of the law. Such regular audits are recommended by most of the commentators and standards groups which have addressed this area. *See, e.g., Report of the Task Force, supra;* IJA/ABA, *Information Systems, supra* at Standard 2.6; Regulations on Criminal Justice Information Systems, 28 C.F.R. §20.21(e); and Search Group, Inc., *supra* at §23. Civil and administrative remedies and strong criminal penalties should be available when the statutory or regulatory provisions on privacy are violated. *See* IJA/ABA, *Information Systems, supra* at Standards 2.3-2.5; Search Group, Inc., *supra* at §24; and Criminal Justice System, *supra* at §8.1.

In order to facilitate such audits, the standard recommends formation of Privacy Councils to institutionalize a concern for juvenile records, to provide a mechanism for promoting consistency in recordkeeping practices and to insure visibility in recordkeeping decisions. IJA/ABA, *Information Systems, supra.* Criminal History Record Control Boards were first proposed by the Search Group in 1971, to oversee compliance with state and federal privacy legislation and regulations. *See* Search Group, Inc., *supra.* The concept has been endorsed by the National Advisory Committee on Criminal Justice Standards and Goals in *Criminal Justice System, supra,* and applied to the juvenile area by both the *Report of the Task Force, supra,* and by the IJA/ABA, *Information Systems, supra.* However, unlike the *Report of the Task Force* and IJA/ABA, *Information Systems,* the National Advisory Committee concluded that creation of a council on children's records separate and apart from a general state security and privacy committee would add to the proliferation of agencies and committee without providing significant additional safeguards or benefits, especially since many of the same individuals would be likely to be asked to serve on both committees. However, each State Privacy Council should be authorized to establish a subcommittee to address juvenile records if it considers such a subcommittee to be necessary.

Related Standards

1.21	Data Base Development and Collection
1.22	Inventory and Analysis of Community Resources
1.23	Problem Identification and Prioritization
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
3.147	Intake—Notice of Decision
3.172	Public and Closed Proceedings
3.186	Predisposition Investigations
4.214	Development of a Treatment Plan
4.233	Group Homes—Services

1.52 Collection and Retention of Records

Information identifiable to a juvenile or family should not be collected by law enforcement agencies, prosecutors' offices, courts, public agencies legally responsible for providing services to juveniles and to their families, or private organizations or programs under contract to such agencies or licensed to provide those services, unless essential:

a. To provide necessary services;
b. To make decisions regarding the juvenile or family in conjunction with the initiation, investigation, processing, adjudication, and disposition of a complaint or petition submitted pursuant to the jursdiction of the family court over delinquency, noncriminal misbehavior, or neglect and abuse;
c. To make decisions regarding the juvenile or family in conjunction with the appeal of the adjudication or an order in a delinquency, noncriminal misbehavior or neglect and abuse proceeding;
d. To provide services pursuant to a referral from an intake unit or the dispositional order of the family court;
e. To administer the court, agency, organization or program effectively and efficiently;
f. To monitor and evaluate the court, agency, organization or program; or
g. To conduct authorized research, evaluative, or statistical studies.

Such identifiable information should be retained in retrievable form only if it is accurate; protected from unauthorized access, disclosure, and dissemination; physically secure; and essential to accomplish one of the purposes specified in paragraphs (a) through (g). The subjects of such information should be notified that the information has been retained, and that they have the right to inspect the records and to challenge their accuracy and retention.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 3.2 and 4.1-4.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 28.1 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard sets out basic principles to guide the collection and retention of data pertaining to juveniles. It is premised on the view that limiting the information collected to only that which is absolutely essential is one of the most effective means of protecting the privacy of individuals, simplifying the problem of keeping identifiable records confidential and secure, and reducing the cost of data gathering and recordkeeping. *See* Standards 3.147 and 3.186. As is noted by both the *Report of the Task Force, supra* at Commentary to Standard 28.1, and the IJA/ABA, *Information Systems, supra* at Standard 3.1:

- Too much as well as too little information can inhibit the decision-making process;
- The need for information is directly related to the number of options available to the decision maker;
- The risk of abuse or misuse increase as the amount of information collected increases; and
- Much information now being collected is not used.

However, this is not intended to imply that no information pertaining to a juvenile should be collected nor records containing such information retained. As is indicated in the standard, identifiable information is needed to make the critical decisions in delinquency, noncriminal misbehavior, and neglect and abuse cases, to provide services to juveniles and their families; to conduct research into the nature and causes of delinquency, *see, e.g.,* M. Wolfgang, R. Figlio, and T. Sellin, *Delinquency in a Birth Cohort* (1972); to evaluate agency and program effectiveness; to facilitate proper planning and management for the juvenile service system; and to assure the accountability of individuals and programs. The intent of the standard is to increase awareness that identifiable information should not be utilized when nonidentifiable information will achieve the same objectives, and to assure that data is collected and stored only when the potential benefits from its use outweigh the potential injury to privacy and related protected interests. National Advisory Committee on Criminal Justice Standards and Goals, *Criminal Justice System.* §8.2 (1973) [hereinafter cited as *Criminal Justice System*].

The standard covers all components of the juvenile service system, including the traditional juvenile justice agencies and the schools, protective services, welfare, health and mental health agencies, and private groups, organizations, or programs which must obtain a license to provide services to juveniles or which provide such services under contract to a public agency. *See* IJA/ABA, *Information Systems, supra* at Definition 1.

This broad coverage is necessary because of the network of interrelationships between the agencies comprising the juvenile service system. For example, family courts and intake units require information on the services which have been provided to juveniles and their families in order to make the decisions required under Standards 3.143-3.145, 3.151-3.158, and 3.182-3.184. Education records may be relevant in many noncriminal misbehavior cases as well as to residential programs providing educational services to juveniles subject to the jurisdiction of the family court. *See, e.g.,* Standards 3.182, 4.2161, and 4.263. In addition, since contracting for services is encouraged throughout these standards, the inclusion of private service providing programs appears necessary to assure consistency in recordkeeping practices and the privacy of individuals receiving the services. *See, e.g.,* Standards 4.2, 4.213, and 4.233.

Information or records identifiable to an individual refers to information which is indexed or able to be retrieved by name, identifying code or number, address or other personal characteristic. Thus, police blotters, court dockets, and other records compiled chronologically are not intended to be covered, nor are notations concerning an individual made in a file concerning another person. The effort involved in sifting through chronologically ordered records or seeking occasional notations substantially reduces the risk of harm. *See Report of the Task Force, supra;* and Regulations on Criminal History Information Systems, 28 C.F.R. §20.20(b) (1976). The standard is also not intended to affect retention of appellate decisions in juvenile cases, although in accordance with Standard 1.53 and the current practice in most states, the juvenile's name should not appear in the opinion.

The standard recommend that the decision to retain information be separated from the decision to collect it. Too often information which has proven to be inaccurate, irrelevant, or of only shortlived value is retained simply because of inertia, and gains importance and credibility by virtue of its existence. IJA/ABA, *Information Systems, supra.* Like the provisions on collection of information, the paragraph on retention applies only to records which are indexed or accessible by name or other identifier. It urges that before a decision to retain information is retained, its accuracy and completeness should be verified, *see* Standards 1.54 and 1.55, and its confidentiality and physical security assured. *See* Standards 1.53-1.535. It specifies further that information should be retained in identifiable form only if "essential" to accomplishing at least one of the seven reasons for collecting the information. These safeguards follow, in principle, the recommendations of the IJA/ABA, *Information Systems, supra, see also* 28 C.F.R. §20.21(a); and *Criminal Justice System, supra,* though the "essentialness" test is more stringent than the criteria proposed in the other provisions. Finally, the standard recommends that immediately after the decision to retain a record has been made, the retaining agency should notify the subject of the record of its existence, that he/she is entitled to inspect it subject to certain limitations, and of the procedures which apply to and identification required for gaining access to the record and to challenging its accuracy and the agency's right to maintain it. Standards 1.533, 1.534, and 1.55; *see also* IJA/ABA, *Information Systems, supra* at Standard 4.4; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 3.5 (tentative draft, 1977). Without such notice, the subject's rights of access would be meaningless.

The principles recommended in this and the other standards in this series are intended to apply to automated as well as manual record systems, and to centralized as well as locally maintained systems. While each type of record system has its benefits and its dangers and while no jurisdiction should rush headlong into automating and/or centralizing its records without assessing the costs, the basic issues of what information should be collected and retained, when and to whom identifiable information should be disclosed, how such information can be kept secure, complete, and accurate, and when it should be sealed or destroyed remain the same. *But cf.* IJA/ABA, *Information Systems, supra* at Standards 4.6 and 4.7; and *Report of the Task Force, supra* at Standard 28.4.

Identifiable records which are retained should not include summary conclusions or labels which describe a juvenile's social, emotional, medical, or behavioral history, or predict future behavior or attitudes unless the underlying or actual basis, meaning, and implications are explained in terms that are understandable to laymen, and the use of such professional jargon cannot be avoided. IJA/ABA, *Information Systems, supra* at Standard 4.5.

Related Standards

1.51	Security and Privacy of Records
1.53	Confidentiality of Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
3.146	Intake Investigation
3.186	Predisposition Investigations
3.187	Predisposition Reports

1.53 Confidentiality of Records

Identifiable information retained under Standard 1.52 should not constitute a public record. Access to such information should be strictly controlled.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 28.2 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 15.1 and 20.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

This standard urges that records pertaining to juveniles and/or their families which are indexed or retrievable by name or other identifier should be strictly controlled. The laws regarding the confidentiality of and access to identifiable records pertaining to juveniles vary widely with regard to both the stringency of the protection and the types of agencies covered. The intent of such statutes is to reduce the risk of stigmatization and dissemination resulting from contact with the juvenile justice system. However, Michael Altman points out that:

> This is a lofty purpose but, as many studies have indicated, it hasn't worked. It hasn't worked because many employers and educators believe that they are taking risks when they employ or enroll a person with a record; because many employers and educators are unwilling to expend funds to conduct a complete investigation to determine whether the existence of a record actually reflects upon the person's present qualifications or trustworthiness, and because there are many loopholes and inadequacies in the laws which seek to preserve confidentiality and eliminate collateral disabilities. Altman, "Juvenile Information Systems: A Comparative Analysis" appearing in L. Boxerman, *Computer Applications in Juvenile Court,* 1, 4 (1974).

Confidentiality of records pertaining to juveniles and closely controlled access to them have been endorsed by all of the major standards groups and model legislation which have addressed the problem. *E.g.,* groups and model legislation which have addressed the problem. *E.g., Report of the Task Force, supra;* IJA/ABA, *Information Systems supra;* IJA/ABA Joint Commission, *Standards Relating to Neglect and Abuse,* Standard 3.4 (tentative draft, 1977); *Model Act for Family Courts,* §§45 and 46 (1975); *Uniform Juvenile Court Act,* §§54 and 55 (1968); U.S. Department of Health, Education and Welfare, *Proposed Model Child Act,* §24 (draft, August 1977); *see also* Regulations on Criminal Justice Information Systems, 28 C.F.R. §20.21(d) (1976); 18 U.S.C. §5038 (Supp. 1976).

It should be noted that the National Advisory Committee has drawn a distinction between the confidentiality of records and the confidentiality of family court proceedings. Standard 3.172 recommends that respondents in delinquency, noncriminal misbehavior, neglect and abuse cases should be entitled to open the proceedings to the public, and that news coverage be limited only by:

> Written voluntary guidelines . . . developed by the news media in conjunction with the family court [which] . . . outline the items related to family court proceedings that are and are not generally appropriate for reporting.

The distinction is based on the impact which "free and robust reporting, criticism, and debate" can have on public understanding of the law and on the accountability of the judicial system, *see Nebraska Press Association v. Cox,* 427 U.S. 539, 587, (1976) (Justice Brennan, Concurring), the prohibition announced in the *Nebraska Press Association* case, on imposing a ban on publication of information available to the public, *id.* at 570, and the knowledge that in most cases, retention of identifiable information obtained at an open hearing will be subject to the limitations of memory of the relatively few people who attend the hearing or who may have been told about the experience. Records, on the other hand, unless access and retention are restricted, will remain available long after the court proceedings have been concluded to persons wholly unconnected with the case, and will, regardless of whether they have been updated, retain an aura of authority which may be out of proportion to their significance at the time of examination. Therefore, identifiable records appear to have a far greater potential for misuse.

Standards 1.531-1.535 set forth detailed recommendations regarding access to law enforcement, court, intake, detention, emergency custody, dispositional, and child abuse investigation records, as well as access to identifiable records pertaining to juveniles by persons or agencies conducting research, evaluative, or statistical studies. Although not covered by these standards, the National Advisory Committee on Standards urges that the news media impose similar controls on access to their files on juveniles who have come in contact with the Juvenile Justice System. Access to education records is governed by the regulations implementing 20 U.S.C.A. §1232(g) (Supp. 1976), 45 C.F.R. Part 99 (1976). For purposes of these standards the most relevant sections of those regulations are §§99.11-99.12 on the procedures for amending education records without parental or student consent, *inter alia,* to officials of another school or school system in which the student seeks to enroll, state and local officials to whom the information is statutorily required to be disclosed, and to comply with a court order. *See also* 145 C.F.R. §99.37 on disclosure of directory information.

The provisions on access to records are intended to limit redisclosure of identifiable information by persons, other than the subject of the record, who have been granted access. Stiff civil and criminal penalties should apply to unauthorized disclosure. *See* Standard 1.51.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.535	Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies.
1.56	Destruction of Records
3.172	Adjudication Procedures—Public and Closed Proceedings

1.531 Access to Police Records

Access to records and files maintained by law enforcement agencies pursuant to Standard 1.52 should be restricted to:

- **a. The juvenile who is the subject of a record and his/her counsel;**
- **b. The parents, guardian, or primary caretaker of a juvenile named in the record and their counsel;**
- **c. Law enforcement officers when essential to achieve a law enforcement purpose;**
- **d. Judges, prosecutors, intake officers, individuals conducting a predisposition investigation, and individuals responsible for supervising or providing care and custody for juveniles pursuant to the dispositional order of the family court, when essential to performing their responsibilities;**
- **e. Individuals and agencies for the express purpose of conducting research, evaluative, or statistical studies; and**
- **f. Members of the administrative staff of the maintaining agency when essential for authorized internal administrative purposes.**

Access under paragraph (c) should only be granted to law enforcement officers in another jurisdiction when the juvenile has been adjudicated or when there is an outstanding order to take the juvenile into custody.

Access under paragraph (e) should be subject to the conditions set forth in Standard 1.535.

Intelligence information—identifiable information compiled in an effort to anticipate, prevent, or monitor specific acts of delinquency—and investigative information—identifiable information compiled in the course of the investigation of specific acts of delinquency—should be maintained separately. Access should be limited to law enforcement officers within the agency when essential to achieve a law enforcement purpose, and to officers in other agencies to confirm information in the files of the other agency or to assist in an ongoing investigation.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems*, Standards 20.2-20.3, (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information*, §§15(c) (2) and (3) and 15.2 (1975); *see also* 28 C.F.R. §20.21(g) (1976).

Commentary

Standard 1.531 recommends restrictions on the dissemination of identifiable information pertaining to juveniles maintained by law enforcement agencies. As noted in *In re Gault*, 387 U.S. 1, 24-25 (1967):

> Police departments receive requests for information from the FBI and other law enforcement agencies, the armed forces, and social agencies, and most of them generally comply. Private employers word their application forms to produce information concerning juvenile arrests and court proceedings, and in some jurisdictions information concerning juvenile police contacts is furnished private employers as well as government agencies.

While the issuance of regulations governing dissemination from criminal justice information systems receiving LEAA support has limited access to law enforcement records regarding juveniles to some extent, 28 C.F.R. §§20.21(b) and (d) (1976), the degree to which such records remain available to persons and agencies inside and outside the juvenile justice system continues to vary greatly from jurisdiction to jurisdiction. In light of this variation, the standard specifies the groups and individuals who should be given access, rather than including a general clause allowing access for persons or agencies with a "legitimate interest" who have obtained an order from the family court. *See, e.g., Model Act for Family Courts*, §46(b) (3) (1975).

Paragraph (a) recommends that the juveniles and/or their attorneys should be given access to law enforcement files concerning them. Such access should be on request and subject to reasonable published rules and regulations. The policy of allowing access by the subject of a record is becoming increasingly accepted and is endorsed by section 524(b) of the Crime Control Act and the regulations issued pursuant thereto, 28 C.F.R. §§20.21(g) and 20.34; the Federal Privacy Act, 5 U.S.C. 552a(b) (i) (Supp. 1976); the National Advisory Committee on Criminal Justice Standards and Goals, *Criminal Justice System*, §8.4 (1973); and the IJA/ABA, *Information Systems, supra; but see* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 5.14 and 28.2 (1976) [hereinafter cited as *Report of the Task Force*]. Access by the subjects of records or their counsel is intended to assure the accuracy of records and compliance with the prescribed recordkeeping, practices, and policies. If a complaint or petition has been filed, access should be limited by the rules of discovery until after dismissal or disposition. *See* Standard 3.167.

Pagragraph (b) is intended to provide access to parents or parental surrogates alleged or found to have neglected or abused their child or repeatedly misused their parental authority, as well as to the parents, guardians or primary caretakers of juveniles accused or proven to have commited delinquent acts or engaged in noncriminal misbehavior. *See* IJA/ABA, *Information Systems, supra* at Standard 20.2; *Model Act for Family Courts, supra; but see Report of the Task Force, supra.* The same reasons underlying access by juveniles support access by their parents.

Paragraphs (c) and (d) recommend access by law enforcement and juvenile justice officials involved in investigating, reviewing, processing, or adjudicating the case, or responsible for supervision or custody of the juvenile. However, they provide that records should not be disclosed unless it is "essential to carrying out the judge's, official's, or officer's lawful duties. As in Standard 1.52, the "essentialness" test is intended to be more stringent than that contained in the source provisions.

Extra precautions are recommended for transfer of information to law enforcement officials in jurisdictions other than that of the maintaining agency, so as to limit the spread, and thus enhance the control of information pertaining to a juvenile. Records of juveniles whose cases were dismissed or have not yet been adjudicated, should not be disseminated in other jurisdictions in order to avoid misinterpretations and unwarranted inferences. *See IJA/ABA, Information Systems, supra* at Standard 20.3.

Access by researchers and evaluators to identifiable data can be critical to efforts to understand the nature and causes of delinquency, noncriminal misbehavior, neglect and abuse, to examine society's response to it, and to improve the operation of the juvenile justice system. Paragraph (e) provides for such access, subject to the safeguards recommended in Standard 1.535. *See* IJA/ABA, *Information Systems, supra* at Standards 20.3 and 5.6; 28 C.F.R. *supra* at §20.21; 28 C.F.R. Part 22 (1976); *but see Report of the Task Force, supra.*

Paragraph (f) provides access when essential for monitoring or administrative purposes. This is not intended to include screening records when an individual seeks a job as a police officer or another governmental post. *See* IJA/ABA, *Information Systems, supra* at Standard 15.3(e); *Model Act for Family Courts, supra;* 28 C.F.R. §20.21(d) and comment thereto; *but see* Search Group, Inc., *supra* at §§11 and 12. *See also* Hawaii Revised Statutes §571-1 (Supp. 1976). The commentary to the regulations on Criminal Justice Information Systems, points out that 28 C.F.R. §20.21(d) "denies access to records of juveniles by federal agencies conducting background investigations for eligibility [sic] to classified information under existing legal authority." The National Advisory Committee recommends in addition, that other relevant federal statutory and regulatory provisions be modified to prohibit requests to law enforcement agencies by the armed services for access to the juvenile records of applicants for enlistment. *See, e.g.,* 10 U.S.C. §504 (1976); and 32 C.F.R. §§571.2(e) (5) (b), 729.6 (b) (4); 888.2(c) and 888.7 (1976). The Committee is in agreement with the resolution adopted by the National Council of Juvenile Court Judges in July 1976, that the armed services can "exert a great rehabilitative factor in transforming young troubled citizens into responsible mature adults leading meaningful and disciplined lives." Although under Standard 1.54 law enforcement records would include the disposition of all matters listed, and under Standard 1.55 the subjects of such records would be able to correct errors and ambiguities, the examination of law enforcement records regarding offenses alleged to have been committed by juveniles retains too great a risk of misinterpretation to warrant the apparent authority to request record checks from local police. One of the traditional reasons for confidentiality of family court proceedings is to allow juveniles to outgrow their mistakes. While as Altman points out, the arguments for allowing prospective employers to see a juvenile's arrest record are very strong in extreme cases—e.g., the child molester seeking a job as a day care teacher—the effort to encourage positive life roles discussed in the prevention chapter and the growing importance of government jobs in the employment market support the view adopted by the IJA/ABA Joint Commission, the *Model Act for Family Courts,* and the Criminal Justice Information Systems Regulations that the general rule for adults included in the Search materials should not be extended to juveniles.

The final paragraph of the standard sets out stringent restrictions on the dissemination of intelligence and investigative information. As noted in the commentary to the provision recommended by the Search Group Inc., *supra:*

> Because of the sensitive and potentially damaging nature of criminal intelligence information, much of which often is unverified, the maintenance, dissemination, and use of such information should be strictly limited to criminal justice purposes . . . In additon, there should be some reasonable limits on the instances in which intelligence information concerning an individual may be collected and the period of time it may be maintained in the absence of some indication of its continued usefulness and relevance.

It should be noted that unlike the Search provisions, the standard limits disclosure to instances in which the information is essential to the performance of law enforcement duties rather than to those in which the requesting officer has merely a "demonstrable need."

It is intended here and in the other sections on access, that agencies with access to identifiable records pertaining to juveniles should authorize a limited number of individuals to receive and review such records, and that reproduction or divulging of disclosed records, other than by the subject of the record, is prohibited.

A provision suggesting guidelines and limits for fingerprinting and photographing of juveniles is included in the chapter on intervention. *See* Standard 2.246.

Destruction of law enforcement records should be governed by the principles set forth in Standard 1.56. Stringent penalties should be imposed for unauthorized disclosure of identifiable information by law enforcement personnel or by individuals, other than the subject of the information, who have had access to law enforcement records.

Related Standards

1.51 Security and Privacy of Records
1.53 Confidentiality of Records
1.532 Access to Court Records
1.533 Access to Intake, Detention, Emergency, Custody, and Dispositional Records
1.534 Access to Child Abuse Records
1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
2.21 Authority to Intervene
2.22 Decision to Refer to Intake
2.221 Criteria for Referral to Intake—Delinquency
2.222 Criteria for Referral to Intake—Noncriminal Misbehavior
2.223 Criteria for Referral to Intake—Neglect and Abuse
2.23 Decision to Take a Juvenile Into Custody
2.231 Criteria for Taking a Juvenile Into Custody—Delinquency
2.232 Criteria for Taking a Juvenile Into Custody—Noncriminal Misbehavior
2.233 Criteria for Taking a Juvenile Into Emergency Protective Custody
2.246 Procedures for Fingerprinting and Photographing Juveniles

1.532 Access to Court Records

Access to case records and files maintained by court under Standard 1.52 should be restricted to:

- **a. The juvenile who is the subject of the record and his/her counsel;**
- **b. The parents, guardian, or primary caretaker of the juvenile named in the record and their counsel**
- **c. Other parties to the proceedings and their counsel;**
- **d. Intake officers, judges, prosecutors, and individuals conducting predispositional or presentence investigations, when essential to performing their responsibilities;**
- **e. Individuals and agencies for the express purpose of conducting research, evaluative, or statistical studies; and**
- **f. Members of the clerical or administrative staff of the family court if essential for authorized internal administrative purposes.**

In addition, objective information such as the nature of the complaint or petition and its disposition should be available to an individual or public agency directed by a dispositional order to take custody of a juvenile or to provide services to or supervise a juvenile and/or his/her family; to a law enforcement agency when such information is essential to executing an arrest warrant or other compulsory process or to conducting an ongoing investigation; to the state motor vehicle department for licensing purposes when the juvenile has been found to have committed a traffic offense; or to an agency or individual when essential to secure services or a benefit for the juvenile. Notice of such disclosures should be sent to the juvenile and his/her parents, guardian, or primary caretaker.

Access granted under paragraph (e) should be subject to the conditions set forth in Standard 1.535.

Access to identifiable intake, detention, emergency custody, and dispositional records maintained by courts should be governed by the principles set forth in Standard 1.533.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 15.2 and 15.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

According to M. Levin and R. Sarri, *Juvenile Delinquency: A Comparative Analysis of Legal Codes in the United States,* 58 (1974), forty-three states forbid public inspection of records maintained by juvenile courts. They note, however, that "these provisions commonly allow the juvenile court judge to release these records when he chooses;" and that "meaningful statutory guidelines regulating the exercise of the discretion are lacking." This standard recommends promulgation of such guidelines for all court files and records pertaining to juveniles which are indexed or retrievable by name or other identifier, and which result from the filing, processing, adjudication, or disposition of delinquency, noncriminal misbehavior, or neglect and abuse complaints and petitions, or from the appeal of interlocutory decisions, adjudications, or dispositions in such cases. Similar if not more stringent restrictions should be imposed on access to identifiable files and records maintained by prosecutors' offices and agencies providing legal services to juveniles and their families, in addition to the traditional privileges and ethical considerations which now apply. Access to intake, predispositional, community supervision, and residential facility records maintained by courts and juvenile service agencies is discussed in Standard 1.533.

Paragraphs (a) and (b) are parallel to provisions on access to law enforcement records in Standard 1.531. Access by the juvenile and parent is essential for providing sufficient notice of the allegations. *See* Standard 3.171. For similar reasons, paragraph (c) recommends access by the prosecuting attorney who is handling the case and to other parties to the proceedings—e.g., the schools in a noncriminal misbehavior proceeding based on allegations of truancy or a corespondent. *Cf.* Standard 3.167; *See* IJA/ABA, *Information Systems, supra; see generally* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 28.2 (1976) [hereinafter cited as *Report of the Task Force.* Paragraph (d) is intended to cover judges in both the family court division and the criminal divisions of the highest court of general jurisdiction, as well as individuals responsible for preparing predispositional or presentence reports. This is to accommodate transfers of delinquency cases to the criminal division, and sentencing of young adults convicted of committing offense. *See* Standard 1.56 and IJA/ABA, *Information Systems, supra.* Access is subject to the stringent need-to-know policy applied throughout these standards.

Paragraphs (e) and (f) are identical to their counterparts in Standard 1.531. *See* Standard 1.535; IJA/ABA, *Information Systems, supra; Report of the Task Force, supra.*

The standard also recommends that certain portions of the court's case file may be made available to supervision or other public agencies ordered to provide care and custody to a juvenile, or to provide services to or supervise a juvenile and/or family; to motor vehicle departments authorized to revoke or refuse to issue a driver's license upon adjudication of a traffic offense; and in limited circumstances, to a law enforcement agency. These portions include the order issued in the case, the complaint and petition, the juvenile's name and address and docket entries if any, but not transcripts, evidence, reports, briefs, or memoranda which have been submitted. Generally, such agencies require only a copy of the charge and of the dispositional order and not the other material included in court records; hence there is little reason to provide access. *See* IJA/ABA, *Information Systems, supra* at Standard 15.3. For access to the predisposition report, *see* Standard 1.533.

In addition, the standard provides that information regarding the charge or the disposition may also be provided, presumably by the agency responsible for community supervision, *see* Standards 4.11 and 4.31, to another agency or individual if disclosure is essential to obtain a service or benefit. It is intended that such information should be disclosed orally and solely on a need-to-know basis—e.g., for an employment program designed for adjudicated delinquents. *See* Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information*, §13.2 (1975); *see also* IJA/ABA, *Information Systems, supra* at Standards 15.3(E) and 15.4(E) (2). Prompt notice of such disclosure should be sent to the juvenile and his/her parents or parental surrogate in order to provide them an opportunity to send additional information to the individual or agency to which the disclosure has been made, to correct any errors and to facilitate monitoring of disclosure practices. *See* Standards 1.51 and 1.55. As is the case with law enforcement records, federal statutory and regulatory provisions should be modified to prohibit requests to courts by the armed services for access to the juvenile records of applicants for enlistment. *See* Commentary to Standard 1.531.

No special provision is made for access to records by the press. While this is not intended to precluded attendance at and reporting of proceedings held in open court pursuant to the guidelines recommended in Standard 3.172, it does restrict media access to identifiable records both contemporaneous with and subsequent to those proceedings unless the provision on access for research, evaluative, and statistical studies applies. *See* Standard 1.535.

Court records should be subject to the provisions for destruction of records discussed in Standard 1.56. Unauthorized disclosure of identifiable court records, should be subject to stringent sanctions. These should apply to persons, other than the subjects of the records, who violate the statutory provisions governing confidentiality of identifiable information pertaining to juveniles after having access to court records.

Related Standards

1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.535	Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
3.11	Jurisdiction
3.167	Discovery
3.172	Public and Closed Proceedings

1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records

Access to records regarding intake, detention, emergency custody, and dispositional decisions and proceedings maintained by courts pursuant to Standard 1.52, and public agencies responsible for intake, detention, and emergency custody decisions; public agencies responsible for supervision of juveniles and/or families prior to disposition or pursuant to a dispositional order of the family court; public agencies responsible for preparation of presentence reports; public agencies responsible for the care and custody of juveniles prior to disposition or pursuant to a dispositional order of the family court; or private programs under contract to or licensed by such agencies to provide for the care and custody of juveniles subject to the jurisdiction of the family court, should be limited to:

- **a. The juvenile who is the subject of the record and his/her counsel;**
- **b. The parents, guardian, or primary caretaker of the juvenile named in the record and their counsel;**
- **c. Intake officers, judges, prosecutors, and individuals responsible for conducting predispositional or presentence investigations or for supervising juveniles or families prior to disposition or subject to the dispositional order of the family court, when essential to performing their responsibilities;**
- **d. A public agency directed to take custody of or provide services to the juvenile who is the subject of the record;**
- **e. Individuals and agencies for the express purpose of conducting research, evaluative, or statistical studies; and**
- **f. Members of the clerical or administrative staff of the maintaining agency when essential for authorized internal administrative purposes.**

The maintaining agency should also be authorized to disclose portions of such records to an agency or individual on a need-to-know basis when disclosure is essential to secure services or benefits for the juvenile and/or family. Written notice of such a disclosure should be sent to the juvenile and his/her parents, guardian, or primary caretaker.

When the subject of a record or his/her parent, guardian, or primary caretaker request access to records which contain information that is likely to cause severe psychological or physical harm to the juvenile or to his/her parents, guardian, or primary caretaker, that information should ordinarily be disclosed to the requesting person's attorney or other independent representative, or through a counseling or mental health professional. In cases in which there is an exceptional risk of severe harm and disclosure through an intermediary is not feasible, the maintaining agency should apply to the family court for authorization to withhold the harmful information or to delete it from the records, such applications should be heard *ex parte,* but the requesting party should be notified of a decision to grant an application to withhold information and of the reasons therefore.

Access to medical and mental health records should be governed by the laws defining the scope of the doctor-patient privilege, the therapist-patient privilege and other applicable privileges, except that records containing information obtained in connection with the provision of counseling, mental health, or medical services to a juvenile which the juvenile has a legal right to receive without the consent of his/her parents or guardian, should not be disclosed under paragraph (b) and should not be granted without the juvenile's informed written consent.

Access under paragraph (e) should be subject to the conditions set forth in Standard 1.535.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Standards, *Standards Relating to Records and Information Systems,* Standards 5.2, 5.5(a) and (b), and 15.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; American Bar Association, *Standards Relating to Sentencing Alternatives and Procedures,* §4.4 (1968) [hereinafter cited as ABA, *Sentencing*].

Commentary

This standard governs disclosure of identifiable reports, files and records likely to contain social history, diagnostic, and other subjective information pertaining to juveniles and their families. As stated in U.S. Department of Health, Education and Welfare, *Standards for Juvenile and Family Courts*, 177 (1966):

> . . . [S]ocial records contain so many matters affecting the intimate, personal affairs of individuals, they require a greater degree of protection than that recommended in the case of legal records.

The standard applies to records maintained by courts, intake units, public agencies responsible for the preparation of predispositional reports and for the supervision of juveniles and/or their families, and public and private agencies and programs responsible for providing care, custody, or services to a juvenile or family prior to disposition or pursuant to a dispositional order of the family court. *See* Standards 3.141, 3.186-3.187, 4.11, and 4.31. Intake unit records are included since they may contain information concerning services provided to juveniles and their families, the responses to those services, and other nonobjective information. *See* Standards 3.143-3.146.

Consistent with Standards 1.531 and 1.532, paragraphs (a) and (b) recommend that the juvenile, the juvenile's counsel, the juvenile's parent or parental surrogates and their counsel, should all have access to intake, dispositional, and other such records. *See* IJA/ABA, *Information Systems, supra;* and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 28.2 (1976) [hereinafter cited as *Report of the Task Force*]. Disclosure of the information contained in those records, especially when it is the basis for significant decisions affecting custody and treatment, is essential to assure accuracy and fairness. *See Kent v. United States*, 383 U.S. 541, 562 (1966); Standards 1.55, 3.147, 3.155-3.157, and 3.187. However, social information concerning one corespondent should not ordinarily be given to another corespondent, his/her parents, or counsel.

Social histories, unlike case files, may contain information which could detrimentally affect a parent's or juvenile's emotional health or aggravate exisitng family conflicts. In situations in which the parties are represented by attorneys, assuring that any fact or opinion which could serve as a basis for a decision adversely affecting an individual is at least disclosed to counsel protects fairness while providing a means for safeguarding the parties from harmful information. *See* Standards 3.155-3.157, and 3.187. But in view of the fact that requests for dispositional information may be made following disposition when the juvenile or family is not actively represented by an attorney, this standard provides in addition, that disclosure may be made through an independent representative who can weigh the risk of harm, or through a professional counselor or mental health professional who can provide the necessary treatment and support. This follows the recommendations adopted by the IJA/ABA, *Information Systems, supra* at Standard 5.5; and *Report of the Task Force, supra.* The IJA/ABA, *Information Systems* recommends as a third alternative, that the agency simply delete the potentially harmful information and assure that the information "will not be used in any way against the juvenile." *See also Report of the Task Force, supra.* This fails to provide for the possibility that the information may have already been used at the time of the request—e.g., to deny the juvenile entrance into a particular program. Hence, the standard provides that in the event that no intermediary is available and the risk of harm is particularly acute, the maintaining agency may apply to the family court to withhold potentially harmful items. Notice that information has been withheld should be given to the parties and the decision to withhold information should be subject to appeallate review. This procedure is comparable to that recommended by the ABA, *Sentencing, supra* at §4.4(b).

The standard also recommends that information resulting from counseling, psychological, psychiatric, or medical services which the juvenile lawfully obtained without the consent of his/her parents, should be withheld from the parents unless the juvenile authorizes its disclosure. *See generally* IJA/ABA, *Information Systems, supra* at Standard 5.2(B). Depending on state law, this may include instances in which older juveniles have lawfully received birth control counseling, received treatment for drug or alcohol abuse, received psychiatric help, been treated for venereal disease, or had an abortion without their parents' knowledge. *See generally* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Rights of Minors*, Part IV (tentative draft, 1977). While such information may not fall within the narrow definition of harmful information discussed above, its inadvertent disclosure could adversely affect attempts to strengthen family ties and discourage voluntary utilization of available counseling and other services by juveniles.

Paragraph (c) recommends access by judges, prosecutors, and intake officers assigned to the case, and to individuals supervising the juvenile and/or family before or after disposition. *see* Standards 1.531, 1.532, and 1.534; IJA/ABA, *Information Systems, supra; Report of the Task Force, supra; Model Act for Family Courts*, §45 (1975)

Paragraph (d) provides for automatic access by the public correctional or social services after disposition. However, access by private agencies or programs which have contracted with a public agency to provide such services, is subject to the discretion of the maintaining agency and requires the notification of the juvenile named in the record or his/her parents, guardian, or primary caretaker. Disclosure to such private agencies and programs should be limited to that information which is essential to the procurement of the needed services or benefits. *See* Standards 1.531, 1.532, and 1.534. These restrictions are consistent with those imposed in Standard 3.187 and are recommended in view of the lesser degree of control and security which many small service programs and private group homes can provide for intake and predisposition reports and diagnostic records. The provisions concerning access by researchers and administrative staff are identical to those in the other provisions in this series.

Before disclosure is made to any of the individuals or agencies listed, the maintaining agency should assure that the information contained in the files is verified and accurate. Unreliable information should be purged from the files, and so should the working notes of the individual collecting the information as soon as they are no longer necessary for the investigation and reporting process. *See* Standard 1.54.

For the reasons discussed in the Commentary to Standard 1.531, federal statutes and regulations should not permit the armed services to seek access to the intake, detention, emergency custody, or dispositional records of applicants for enlistment.

Destruction of the types of records discussed in this provision should be governed by the principles set forth in Standard 1.56. Stringent penalties should be applied in the event of unauthorized disclosure, by agency or court personnel or individuals, other than the subjects of the records who violate the statutory provisions governing confidentiality of identifiable information pertaining to juveniles.

Related Standards

1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.534	Access to Child Abuse Records
1.535	Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
3.141	Organization of Intake Units
3.146	Intake Investigation
3.186	Predisposition Investigations
3.187	Predisposition Reports
4.11	Role of the State
4.214	Development of a Treatment Plan
4.2171	Initial Health Examination and Assessment
4.223	Camps and Ranches—Services
4.233	Group Homes—services
4.263	Detention Facilities—Services
4.54	Disciplinary Procedures
4.81	Grievance Procedures

1.534 Access to Child Abuse Records

Access to records which are maintained under Standard 1.52 and which pertain to the reporting or investigation of alleged incidents of child abuse as defined in Standard 3.113(b), or to the initiation of a neglect or abuse complaint should be limited to:

a. The juvenile named in the report or complaint and his/her attorney;

b. The parents, guardian, or primary caretaker of that juvenile and their attorney;

c. Individuals or public agencies conducting an investigation of a report of child abuse, or providing services to a juvenile or family on a voluntary basis following such a report, when access is essential to performing their responsibilities.

d. Intake officers, judges, prosecutors, and individuals responsible for conducting predispositional investigations or supervising families subject to the dispositional order of the family court, when access is essential to performing their responsibilities;

e. A public agency directed to take custody of the juvenile who is the subject of the record, or to provide services to the juvenile or his/her parents, guardian, or primary caretaker;

f. Individuals for the express purpose of conducting research, evaluative or statistical studies; and

g. Members of the clerical or administrative staff of the maintaining agency when essential for authorized internal administrative purposes.

The maintaining agency should also be authorized to disclose portions of such records to an agency or individual on a need-to-know basis when disclosure is essential to diagnosis or treatment of the juvenile's conditions or to secure services or benefits for the juvenile and/or family. The agency should also be authorized to disclose to a person required by law to report instances of possible child abuse coming to his/her attention, a summary of the actions taken following such a report. Written notice of all disclosures should be sent to his/her parents, guardian, or primary caretaker.

Access by the subject of a record of his/her parent, guardian, or primary caretaker, or to a person who made a report of abuse or cooperated in a subsequent investigation thereof, and access to medical and mental health records should be governed by the principles and procedures set forth in Standards 1.533. Access under paragraph (f) should be subject to the conditions set forth in Standard 1.535.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 5.2, 5.5, and 15.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §24 (draft, 1977).

Commentary

This standard sets forth the principles governing the disclosure of records pertaining to the reporting and investigation of child abuse—i.e., a physical injury or injuries inflicted nonaccidentally by a juvenile's parents, guardian, or primary caretaker, which causes or creates a substantial risk of death, disfigurement, impairment of bodily function, or bodily harm. *See* Standard 3.113(b). Questions concerning the confidentiality of such records are especially significant in view of the current emphasis on enactment of broad child abuse reporting statutes. *See, e.g.,* Child Abuse Prevention and Treatment Act, Pub. Law No. 93-247 §4(b) (2), (1974). Like the other provisions in this series, no distinction is made between information maintained locally and that maintained in a central register.

The standard closely follows the provision in Standard 1.533 on access to intake, detention, emergency custody, and dispositional records. It recommends disclosure of child abuse records to persons named in the report or complaint, including both the juvenile and the juvenile's parents or parental surrogates. Such disclosure is necessary to provide both proper notice of the allegations and an opportunity to correct misunderstandings and supply explanatory and/or exculpatory information. *Accord,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 3.4(c) (2) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §24 (draft, 1977); 45 C.F.R. 1340.3-3(5) (1976). It is anticipated that as with intake and predispositional reports, child abuse investigation and reporting records will ordinarily be disclosed to the attorneys for the parties rather than directly to the parties themselves. *See* Commentary to

Standard 1.533. It would then be for counsel to decide what information should be withheld so as not to cause severe psychological or physical harm to the juvenile, to his/her parents, guardian, or primary caretaker, or to a person who reported the alleged abuse or furnished information during the investigation or the allegations. As with the information covered in Standard 1.533, when the juvenile or parent is not represented by counsel, harmful information would be subject to excision from a record or report only when the family court finds that the risk of harm is exceptionally great, and disclosure through an independent representative or a counseling or mental health professional is not feasible.

Whether or not to disclose the identity of persons making child abuse reports to the subjects of those reports is a major point of difference in the proposals on child abuse reporting. On the one hand, it is argued that disclosing the identity of informants will discourage persons from reporting instances of child abuse. A. Sussman and S. Cohen, *Reporting Child Abuse and Neglect: Guidelines for Legislation*, 47-50 (1975); IJA/ABA, *Neglect, supra.* On the other hand, Commentary to the *Proposed Model; Child Protection* Act, *supra* at §21(h), suggests that:

> Only with informed vigilance of persons who are the subject of reports can the accuracy of the information in it be fully assured. Thus, under this subsection, a subject of a report may receive a copy of all the information about him contained in the register at any time. Such notice is a matter of fundamental fairness—people ought to know what information a government agency is keeping about them. . . Nevertheless . . . the subject of the report's right to access is not absolute. The identity of any person who made the report or who cooperated with the subsequent investigation may be withheld when . . . such information is "likely to be detrimental to the safety or interests of such person." The withholding of information is not to be automatic, but must be based on the individual facts of each case.

The National Advisory Committee concluded that the latter view, on balance, best protects the rights, interests, and safety of all the individuals involved, and that the family court is the appropriate forum for decisions to withhold information.

Paragraphs (c)-(e) call for access by individuals, agencies, and courts when such access is "essential" to investigating or adjudicating child abuse reports, complaints, and petitions, or providing treatment and services to the juveniles and families named in those reports, complaints, or petitions. *See* IJA/ABA, *Neglect, supra; Proposed Model Child Protection Act, supra.* In family court proceedings, such records would be handled in the same manner as any other identifiable information. *But cf. Proposed Model Child Protection Act, supra;* and 45 C.F.R. 1340.3-3(5) (1976). Included among those persons to whom the maintaining agency may disclose child abuse reports or records is a physician diagnosing or treating the injuries allegedly resulting from abuse. *See* 45 C.F.R. §1340 .3-3(5), *supra; Proposed Model Child Protection Act, supra; but see,* A. Schuchter, *Child Abuse Intervention: A Presciptive Package*, 38 (1976).

In addition, the standard urges that agencies receiving and investigating reports of child abuse be authorized to furnish to persons required by law to report instances of abuse coming to their attention, a summary of the actions taken as a result of any reports which they have made. To reduce administrative costs and unnecessary dissemination of identifiable information, such summaries should be provided only upon request. It is anticipated that this will help to encourage accurate reporting by providing verification of the diagnosis and feedback on the care and services provided to the child and family. *See Model Child Protection Act, supra.*

Stringent penalties should be provided for unauthorized disclosure of child abuse records. These should apply to individuals other than the subjects of the records, who violate the statutory provisions governing confidentiality of identifiable information pertaining to juveniles after having access to child abuse records.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.535	Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.55	Accuracy of Records
2.13	Intervention to Protect Against Harm
2.21	Authority to Intervene
3.113	Jurisdiction Over Neglect and Abuse
3.146	Intake Investigation

1.535 Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies

Access to records maintained under Standard 1.52 should not be granted to individuals or agencies for the purpose of conducting a research, evaluative, or statistical study unless an application is filed with the court or agency maintaining the record, which describes:

- **a. The purpose of the study;**
- **b. The qualifications of the individuals conducting the study;**
- **c. The identifiable information sought and the reasons why the purpose of the study cannot be achieved without using information in identifiable form;**
- **d. The methods to be used to assure that the anonymity of the subject of the records is preserved; and**
- **e. The methods to be used to assure that the information will be physically secure.**

Decisions approving or disapproving applications for access should be in writing and should be subject to review.

Identifiable information collected for research, evaluative, or statistical studies should be immune from legal process and should not be used for any purpose in any judicial, legislative, or administrative proceeding without the informed written consent of the person to whom the information pertains.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standard 5.6 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]; and *Regulations on Confidentiality of Identifiable Research and Statistical Information,* 28 C.F.R. Part 22 (December 15, 1976).

Commentary

Research, evaluative and statistical studies, in addition to their critical role in advancing knowledge, are increasingly being called upon to assist in the management and assessment of juvenile service system agencies and programs, and in the monitoring of recordkeeping practices. *See* Standards 1.31, 1.32, and 1.51. This standard sets forth procedures governing disclosure to researchers and evaluators of identifiable information pertaining to juveniles maintained by courts and agencies pursuant to the principles set forth in Standard 1.52. It requires individuals or agencies seeking access to identifiable information for research purposes to submit a detailed application. This follows the procedure recommended in IJA/ABA, *Information Systems, supra,* and is comparable to the privacy certificate required to be submitted for research sponsored under the Crime Control Act, Pub. L. 93-83, [codified at 42 U.S.C.A. §3701 *et.seq.* (Supp. 1976)]; *see Regulations on Confidentiality of Identifiable Research and Statistical Information,* 28 C.F.R. §22.23 (1976). It should be noted however, that under 45 C.F.R. §99.31 (a)(6)(1976), educational records cannot be disclosed to researchers without the written consent of the juvenile's parent unless the research is intended to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction.

The standard provides that the application should be sent to the maintaining agency. The provision approved by the IJA/ABA, *Information Systems, supra* requires a copy of such applications to be sent to the Privacy Council as an extra safeguard. Given the broad scope of the Privacy Council's responsibilities, under Standard 1.51, this seems like an unproductive and time-consuming alternative. However, a log of disclosures should be maintained to assist the Privacy Council and others monitor recordkeeping practices. *See* Standard 1.51

Paragraph (a) requires that the application describe the purpose of the study. This, like the other proposed requirements, is not intended as a curb on academic freedom. It is simply meant to assure that the study has "a valid educational, scientific or public purpose," IJA/ABA, *Information System, supra* at Standard 5.6(B)(2), and that it is not intended to cause legal, economic, social, or physical harm to the persons whose identity is revealed. *See* 28 C.F.R. §22.26(b).

Paragraph (b) is intended to assure that only individuals with the level of training and experience necessary to conduct the proposed study and to assume responsibility for the protection and proper use of identifiable records are granted access to such records. *See* IJA/ABA, *Information Systems, supra.*

The explanation of why the study could not be conducted without identifiable information required in paragraph (c) is the most important section of the application. As in the other access provisions, disclosure should only be made to researchers when essential to achieving the purpose of the research, evaluative, or statistical study. If those purposes can be achieved by using information from which the identities have been stripped, the required information should be turned over in nonidentifiable form. *See* 28 C.F.R. §22.26(b).

Among the methods which may be used by researchers in preserving the anonymity of the subject of identifiable records pursuant to paragraph (d) are:

- Omitting any data from research findings and reports which is labeled by name or other personal identification or which by virture of sample size or others factors can be reasonably interpreted as referring to a particular private person;
- Providing identifiable data to project officials, employees, and subcontractors only when disclosure is essential to accomplishing the research, evaluation, or statistical purposes of the project;
- Requiring execution of a transfer agreement between the researcher and the recipient of the information before secondary disclosure is made to nonmembers of the project staff;
- Requiring a detailed justification for transfer of identifiable information to a nonmember of the project staff or to the sponsoring agency. *See* 28 C.F.R. §22.23, 22.24, and 22.26.

Paragraph (e) requires applicants to indicate how the identifiable information will be protected against theft, fire, flood, and other national disasters.

Like other administrative decisions, approvals or disapprovals of applications for access to records pertaining to juveniles should be subject to administrative and ultimately, judicial review. The standard goes further than the provision proposed by the IJA ABA, *Information Systems, supra,* by recommending that approval as well as disapproval of an application should be subject to review at the request of a third party—e.g., the subject of an identifiable record or the Privacy Council.

The final paragraph of the standard recommends that identifiable information collected during the course of a research, evaluative, or statistical study should be immune from subpoena or introduction as evidence in a judicial or administrative proceeding unless the consent of the subject of the information has been obtained. This follows §524(a) of the Crime Control Act of 1973 (Pub. Law 93-83) and the regulations proposed pursuant thereto. 28 C.F.R. §22 *et.seq.; see also* National Academy of Sciences, *Protecting Individual Privacy in Evaluation Research* 7 (1975); and P. Nejelski and H. Peyser, *A Researcher's Shield Statute: Guarding Against the Compulsory Disclosure of Research Data* (1974). The recommendation primarily addresses information collected directly from the individuals named in the records rather than the records themselves. The need for such immunity was forcefully outlined in the National Academy of Sciences report, *supra:*

> . . . Some kind of legal protection of research must be considered, to guarantee that respondents who give information about themselves to researchers . . . need not fear that the information will be revealed to their detriment in a court or to an investigative body. Without such protection, it will become more and more difficult to obtain the information needed for valid evaluation of the effects of government programs.

Identifiable information obtained for research, evaluative, or statistical purposes is excepted from the provisions on destruction of records outlined in Standard 1.56, so as to permit longitudinal and other long-term research studies as well as after-the-fact assessments. However, this exception is not intended to exempt individuals from the strong civil or criminal penalties which should apply to unauthorized disclosure of identifiable information pertaining to juveniles. 28 C.F.R. §22.29; and Crime Control Act at §524. In addition, the maintaining agency should terminate access rights whenever it determines that the study or any member of the staff thereof has violated the terms of the application or the rules and regulations regarding access.

Related Standards

1.31	Development of an Evaluation System
1.32	Development of a Research Capability
1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody and Dispositional Records
1.534	Access to Child Abuse Records
1.56	Destruction of Records

1.54 Completeness of Records

Procedures should be developed to assure the completeness of records maintained pursuant to Standard 1.52.

Included in those procedures should be provisions requiring:

a. That written notice of the disposition or dismissal of a delinquency, noncriminal misbehavior, or neglect and abuse complaint or petition be sent within 30 days to law enforcement, protective services, supervision, and other public agencies or programs involved in the investigation of the report complaint or petition, in the taking into custody, detention or custody of the juvenile, or in the supervision of the juvenile and/or family, and

b. That the information contained in the notice be entered within 15 days of its receipt on any identifiable records pertaining to the juvenile which are maintained by such agencies.

Sources:

See generally 28 C.F.R. §20.21(a) (1976); Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information*, §§17.1(b) and (c) (1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems*, Standard 15.3(b) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

In order to minimize the risk of misinterpretation, records should be kept as accurate and complete as possible. This standard, together with Standard 1.55, urges agencies maintaining identifiable records pertaining to juveniles to institute procedures which will facilitate identification and correction of information which may be erroneous at the time of collection or which has become inaccurate or incomplete with the passage of time.

This provision specifically addresses the problem of law enforcement and other records which note that a juvenile has been taken into custody but not the disposition which resulted. Paragraph (a) recommends that notice of a disposition or dismissal or of a delinquency, noncriminal misbehavior, or neglect and abuse petition or complaint, be sent to the agencies involved in taking a juvenile into custody, referring him/her to the intake unit, or investigating a report of child abuse; to the intake unit; and to the agencies responsible for detention, custody, or supervision of the juvenile and/or family. The terms "disposition" and "dismissal" include failure to file a complaint following intervention or following investigation of report of child abuse; dismissal of a complaint by the intake unit with or without referral to services; dismissal of a complaint by the prosecutor because it is legally insufficient; dismissal of a petition by the prosecutor or the family court prior to adjudication; issuance of a dispositional order following adjudication; and dismissal of a petition following appeal. The standard requires that the notice be sent no more than thirty days after the dismissal or dispositional order is final, and that the record be corrected no more than fifteen days after the notice has been received. The Regulations on Criminal Justice Information Systems, 28 C.F.R. §20.21(a)(1) provide a ninty-day notification period. The shorter ninty-day period was selected in order to be consistent with the strict time limits recommended throughout these standards. *See* Standard 3.161.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.55	Accuracy of Records
2.221	Criteria for Referral to Intake—Delinquency
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior
2.223	Criteria for Referral to Intake—Neglect and Abuse
2.234	Form of Citation, Summons, and Order to Take into Custody
2.241	Procedures Following a Decision Not to Refer to Intake
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior
2.341	Procedures Following a Decision Not to Refer to Intake
3.141	Organization of Intake Units
3.142	Review of Complaints
3.163	Decision to File a Petition
3.164	Petition and Summons
3.165	Determination of Probable Cause
3.188	Dispositional Hearings
3.191	Right to Appeal
4.11	Role of the State

1.55 Accuracy of Records

Procedures should be developed to assure the accuracy of records maintained under Section 1.52.

Included in those procedures should be provisions which permit the subject of an identifiable record to challenge its accuracy or completeness, and which provide for administrative and judicial review of a refusal by the maintaining agency to correct or destroy challenged information.

Sources:

See generally 28 C.F.R. §§20.21(a) and (g) (1975); Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information,* §§14.1(1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 2.6(A) and (B), 16.1, and 21.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*..

Commentary

This standard calls upon all courts and agencies maintaining identifiable records pertaining to juveniles to establish procedures for assuring that those records are accurate. These procedure should include data collection, entry, storage, and auditing methods which "will minimize the possibility of recording and storing inaccurate information and which require that upon the detection of "inaccurate information of a material nature," all individuals, courts agencies known to have received that information will be notified of it. *Regulations on Criminal Justice Information Systems,* 28 C.F.R. §20.21(a)(2); *see also* Standards 1.54 and 1.56. They should also include the right of the subject of a record to inspect it and challenge both its accuracy and the authority of the agency to maintain it. *See* Standards 1.52, and 1.531-1.534. This is in accord with the recommendations in the source materials as well as the Federal Privacy Act of 1974, 5 U.S.C.A. §552a(d) (Supp. 1976) and other recent federal legislation. *See, e.g.,* Family Educational Privacy Act of 1974, 20 U.S.C.A. §1232g(a)(2); and Fair Credit Reporting Act, 15 U.S.C.A. §1681i; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 28.1 (1976).

Written rules should be issued governing inspection of and challenges to records. These rules should be well publicized. They might include reasonable requirements for verifying the identity of the person requesting access, prohibitions on access to investigative and intelligence information, *see* Standard 1.531, and appropriate limitations on access to information which could be considered harmful under Standards 1.533 and 1.534. There should also be provisions for administrative appeals of decisions not to correct or destroy a record, as well as judicial review for those few cases in which the administrative review process is unable to resolve the differences between the subject of the record and the maintaining agency. *See* Standards 1.54, 1.56; and 3.2; and Search Group, Inc., *supra.*

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.56	Destruction of Records
3.147	Notice of Decision
3.156	Review of the Conditions of Release
3.167	Discovery
3.187	Predisposition Reports
3.2	Noncourt Adjudicatory Proceedings

1.56 Destruction of Records

The destruction of a record should be mandatory and should not be contingent upon receipt of a request by the subject of that record.

Records retained under Standard 1.52 which result from the investigation, initiation, processing, and disposition of a delinquency complaint or petition, should be destroyed no more than five years after the date on which they were created unless:

- **a. The allegations in the petition are proven beyond a reasonable doubt, in which case the records should be destroyed no more than five years after termination of the disposition imposed; or**
- **b. An adjudication is held at which the state fails to prove the allegations in the petition beyond a reasonable doubt, in which case the records should be destroyed immediately.**

Records retained under Standard 1.52 which result from the investigation, initiation, processing, or disposition of a noncriminal misbehavior complaint or petition, should be destroyed no more than five years after the date on which they were created or at the time the juvenile named in those records attains the statutory age of majority, whichever occurs first, unless an adjudication hearing is held at which the state fails to prove the allegations in the petition beyond a reasonable doubt, in which case the records should be destroyed immediately.

Prior to destroying a record, the maintaining agency should advise the subject of the record that the record is being destroyed and that the subject and his/her family may inform any person or organization that with regard to the proceedings from which the record resulted, they were not arrested, held in custody, named in a complaint or petition adjudicated, or subject to a dispositional order of the family court.

Notice of destruction of a record should also be sent to all persons, courts, agencies, and programs which may have copies of or notations regarding such records. Persons, courts, agencies and programs, receiving such a notice should promptly destroy all copies of the record or portion or notations thereof contained in their files, unless the information was obtained for research, evaluative, or statistical purposes pursuant to Standard 1.535.

Source:

See generally Institute of Judicial Administrative/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standards 17.1, 17.5, 17.6, and 17.7(A) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*].

Commentary

While accurate and complete records are necessary for the effective operation of the juvenile service system, such records can also result in a lifelong stigma because of youthful mistakes in judgment.

Many job opportunities, or governmental agencies, are explicitly forclosed to those with juvenile records. A record involving a delinquency also can preclude membership in labor unions or apprentice programs, or licensing for regulated occupations. The difficulties in finding employment are rampant even in unskilled labor jobs and increase with the level of skill required. Moreover, a juvenile with a record often is prevented from obtaining the education or training necessary to make gainful employment possible.

These disabilities are not the most devastating results of juvenile records; indirect economic and social effects resulting from adverse public sentiments rarely distinguished between a person merely arrested and then released and a person actually adjudicated a delinquent, for example. National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice Standards and Goals,* 782 (1976) [hereinafter cited as *Report of the Task Force*].

Recognizing that the vast majority of juveniles who commit a delinquent offense do not pursue criminal careers, most sets of standards, model legislation, and many state codes provide for either sealing or destroying identifiable records pertaining to juveniles after a specified period of time has elapsed following termination of supervision. *See, e.g.,* IJA/ABA, *Information Systems, supra; Report of the Task Force, supra;* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 3.4(B) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; U.S. Department of Health, Education and Welfare, the *Proposed Model Child Protection Act,* §21(F) (draft, 1977); Uniform Juvenile Court Act, §57 (1968); *Model Act for Family Courts,* §48 (1975); and 18 U.S.C.A. §5038 (Supp. 1976); *see also* the Search Group, Inc., *Standards for Security and Privacy of Criminal Justice Information,* §18.4 (1975); and National Advisory Committee on Criminal Justice Standards and Goals, *Criminal Justice System*, §7.5 (1973) [hereinafter cited as *Criminal Justice System*].

Those groups favoring sealing of records—i.e., removing the records from a routinely available status to a status requiring special procedures for access, Search Group Inc., *supra* at §18.2, argue that destruction of the records imposes an unnecessary impediment to long-term and retrospective research studies essential for determining the characteristics of delinquency and the factors contributing to the development of criminal careers; and makes it possible for individuals to prove, subsequent to the date of destruction, that they were acquitted, that the former charges were dismissed, or that rumors regarding past deliquent conduct are false or exaggerated. *See Report of the Task Force, supra.* On the other hand, it is argued that sealing records, in practice, is ineffective except as a way in which the maintaining agency can exclude those whom it does not wish to see the records from gaining access, and that the advantages of freeing persons from the burden of a record of youthful misconduct outweigh the relatively rare instances in which the record would be needed for research or exoneration. *See generally* IJA/ABA, *Information Systems, supra.*

While recommending that records be destroyed rather than sealed, the National Advisory Committee has sought to answer the problems which have been raised as well as the need of courts and corrections agencies for information about the acts of delinquency committed by young adults while they were under age eighteen. *See* Standard 3.114.

Standard 1.56 recommends that with two exceptions, records resulting from the investigation, arrest, summoning, intake, detention, or charging of a youth alleged to have committed a delinquent act should be destroyed automatically within five years of their creation. Because of the need to provide some period beyond the termination of a dispositional order before a record is destroyed, premising destruction upon the application of the subject of a record is unlikely to be effective. The five-year maintenance period is based on the conclusion of the National Advisory Committee that the records arising from an adjudication of delinquency are of little relevance if the subject of those records has stayed out of trouble for five years, and that even in those instances in which the individual commits another offense during the maintenance period, information which is over five years old will be of only peripheral value. The recommendations of other groups vary regarding the time and other limits which should apply to expungement or sealing of records. *Cf.* IJA/ABA, *Information Systems, supra* at Standard 17.3 (destruction two years after discharge if no charge is pending); *Uniform Juvenile Court Act* (sealing two years after discharge if the child is rehabilitated and moral turpitude was not involved); *Model Act for Family Courts* (five years unless another charge is pending); *Proposed Model Child Protection Act* (stripping of identifiers five years following submission of a child abuse report unless there has been a new report involving the family); IJA/ABA, *Neglect, supra* (stripping seven years after the original report); Search Group, Inc., *supra* (sealing or purging of records seven years after conviction of an adult for a felony, five years after conviction for a misdemeanor); *Criminal Justice System, supra* (expungement ten years after a felony conviction, five years after a misdemeanor conviction).

The first exception to the proposed five-year rule is when the juvenile has been adjudged delinquent as the result of an admission or the state having sustained its burden of proof at an adjudication hearing. In such instances, destruction of the records concerning the case should be delayed for up to five years after the expiration of the dispositional order. The second exception is when the state fails to sustain its burden of proof at the dispositional hearing. In such cases the records should be destroyed immediately.

In noncriminal misbehavior cases, the standard provides that unless the family court finds that the state has failed to sustain its burden of proof, records resulting from the investigation, arrest, summoning, intake, detention, or charging of a youth or parent should be destroyed five years after their creation or when the juvenile reaches the age of majority specified by statute, whichever occurs first. As in delinquency cases, when a noncriminal misbehavior petition is dismissed for lack of proof at the adjudicatory stage of the proceedings, the records should be destroyed at once.

No provision is made for immediate destruction of records when the arrest of a juvenile or the filing of a delinquency or noncriminal misbehavior petition or complaint does not result in an adjudication hearing, in order not to discourage referral of the juvenile to services and dismissal of the complaint at the intake stage of the proceedings. *See* Standards 3.142-3.144; *but see, e.g.,* Search Group, Inc., *supra;* IJA/ABA, *Information Systems, supra* at Standard 17.2(A) and (B); and *Model Act for Family Courts.* The standard requires that prior to destruction, a notice should be sent to the person to whom it pertains. This is to assure that the subject of a record has an opportunity to obtain a copy so that he/she will later be able to prove what he/she did or did not do, or the results of any evaluations or diagnoses documented in dispositional records. *See* IJA/ABA, *Information Systems, supra* at Standard 17.6.

Following the position adopted by the Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, the standard urges that the subject of a record and his/her family should be entitled to deny that any of the matters to which the record refers, ever occurred. As noted in the commentary to the Task Force provision, this is not intended as a pardon. Rather, it is designed to allow the errors of youth to be forgotten and to avoid hindering a person's ability to find a job and become a productive member of society. *Cf.* IJA/ABA, *Information Systems, supra* at Standards 17.6(B) and 17.7(B).

Finally, the standard provides for notifying persons, courts, and agencies which have had access to a particular record in accordance with Standards 1.531-1.535, that the record has been destroyed and that they are obligated to destroy any copies or references to it contained in their files. An exception is made, however, for identifiable information obtained for research, evaluative, and statistical purposes under Standard 1.535. As noted above, this exception is to permit longitudinal and other long-term research studies as well as after-the-fact assessments. In making this limited exception, the National Advisory Committee recognized that based on past experience, it is highly unlikely that identifiable information collected for research purposes would be misused to harm the subject of that information. However, this provision is not intended to exempt persons who have obtained information obtained under Standard 1.535 from the strong civil and criminal sanctions which should apply to unauthorized disclosure of identifiable information pertaining to juveniles.

Related Standards

1.51 Security and Privacy of Records
1.52 Collection and Retention of Records
1.53 Confidentiality of Records
1.531 Access to Police Records
1.532 Access to Court Records
1.533 Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.535 Access for the Purpose of Conducting Research Evaluative, or Statistical Studies
1.54 Completeness of Records
1.55 Accuracy of Records

THE INTERVENTION FUNCTION

The Intervention Function

Introduction

This chapter concerns interventions into the lives of juveniles and their families by public officials such as police officers, child protective services, welfare, school, and other public health, mental health, and social services personnel, in response to apparent neglect or abuse, noncriminal misbehavior, delinquent conduct, medical emergencies, and/or family crises. The term "intervention" is meant to indicate the moment the public official makes contact with the youth or family. It is not synonymous with referral to the family court or removal of juveniles from their home. Though one result of intervention may be placing a child in custody and referring the matter to family court for adjudication, intervention ordinarily will be more closely linked to the prevention activities described in the previous chapter. Hence, intervention is simply the point of contact precipitated by specifically defined conduct by or involving a juvenile and the actions which immediately follow that contact.

This definition of intervention reflects current practices. Although limited to contacts based on delinquent conduct, a number of studies have shown that most interventions do not result in referral of the matter to the intake unit and family court. For example, of the juveniles actually arrested because of an alleged delinquent act, an average of 30 percent to 45 percent are either counseled and released or referred to community services. *See, e.g.*, M. Klein and K. Teilmann, *Pivotal Ingredients of Police Juvenile Diversion Programs* 9 (LEAA, 1976); W. Webster, *Crime in the United States: 1978*, 228 (1979); President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*, 18 (1967). In some police departments the counsel/community referral rate may exceed 70 percent. Klein and Teilmann, *supra* at 10.

While intervention practices affect hundreds of thousands of juveniles and their families each year, there have been comparatively few guideposts to assist law enforcement officers and child welfare, protective services, school, and other public social services personnel in determining whether to refer a juvenile or family to the intake unit and whether to take a juvenile into custody. The standards recommended in this chapter identify the basic principles on which to base intervention decisions, and propose procedures to improve the consistency of those decisions, increase the accountability of the decision makers, and assure the fairness of the intervention process.

The chapter is divided into three major sections. The first delineates the circumstances in which intervention is appropriate. Standards 2.11-2.13. While they are keyed to the recommendations regarding the jurisdiction of the family court, the criteria for intervention are necessarily broader, since, as is noted above, referral to the intake unit for possible submission to the family court is only one of the alternatives available upon intervention. *Cf.* Standards 3.111-3.113. For example, a police officer or protective services worker may intervene when a child is alone and in need of immediate medical care, even though the harm or threatened harm does not fall within the definition of neglect and abuse set forth in Standard 3.113. However, the standards make clear that except in medical emergencies, services should not be provided on other than a voluntary basis except upon an order of the family court issued following completion of the procedures described in the chapter on adjudication.

The second series of standards focuses on intervention by law enforcement officers. Standards 2.21-2.253. Since police officers are often the first societal agents who must deal with accidents, emergencies, family crises, and criminal conduct, the standards set forth explicit guidelines for determining whether to refer matters to the intake unit following intervention, Standards 2.221-2.223, and whether to take a juvenile into custody. Standards 2.231-2.234. While the conduct leading to intervention varies, the types of options available are similar in delinquency, noncriminal misbehavior, and neglect and abuse cases. Hence, the decision-making format is identical although the specific criteria differ depending on the nature of the conduct involved. *Cf.* Standards 3.142-3.144, and 3.151-3.154. In addition, the standards in this series define the scope of authority to intervene, Standard 2.21, the rights and procedures which apply following intervention by a law enforcement officer, and the role of specialized juvenile units in law enforcement agencies and juvenile specialists in patrol teams or units.

The standards in the 2.3 series cover the authority of other government agencies—e.g., child protective service agencies and health or welfare departments—to intervene into the lives of juveniles and their families, and the criteria, rights, and procedures which should apply following such interventions. These provisions are parallel to those for law enforcement agencies, but are limited to intervention because of noncriminal misbehavior, neglect or abuse, or the need for immediate medical care.

Together these standards provide a framework on which systemwide intervention policies and guidelines can be developed and the intervention practices of individual agencies assessed.

2.1 The Circumstances in Which Society Should Intervene

2.11 Intervention for Commission of a Delinquent Act

It is appropriate for society to intervene in the life of a juvenile who has committed a traffic offense or an act which if committed by an adult would be designated a criminal offense under federal, state, or local law.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 9.1 (1976) [hereinafter cited as *Report of the Task Force*]; 18 U.S.C. §5031 (Supp. 1979).

Commentary

This standard and those which follow are intended to clarify when it is proper for society to intervene in the lives of juveniles. As noted in the introduction to this chapter, the term "intervene" is intended to indicate the moment at which a public official makes contact with a juvenile because he/she is in danger of or is being harmed by others, is engaging in conduct harmful to him/herself, or is engaging in conduct which harms others. While the sets of standards examined define limits for the jurisdiction of the family court, none address the question of intervention because of delinquent conduct.

Standard 2.11 declares that it is proper for the authorities to intervene when a juvenile commits a criminal act. Put another way, it states that it would be anomalous to ignore conduct which a jurisdiction has chosen to consider criminal simply because it was committed by a person under the age of 18. The standard does not distinguish between felonies and misdemeanors, and includes both traffic offenses and violations of regulatory laws or ordinances. Consequences of the intervention and the court or agency which should intervene may vary depending on the nature and seriousness of the violation. *See* Standards 2.221, 2.231, 3.111, and 3.143. For example, Standard 3.111 specifies that traffic offenses other than those charged against a juvenile who was too young to obtain a license at the time the offense is alleged to have occurred, those for which there is a mandatory term of incarceration upon conviction, as well as traffic offenses such as vehicular homicide, reckless driving, driving while under the influence of alcohol or narcotics or dangerous drugs, and leaving the scene of an accident, should be cognizable in the court or administrative agency having jurisdiction over adults for such offenses, rather than in the family court.

The standard excludes noncriminal misbehavior—i.e., conduct such as truancy, running away, and repeated disregard for parental authority for which only juveniles may be detained and adjudicated—from the definition of delinquency. While noncriminal misbehavior may be an appropriate basis for intervention, *see, e.q.,* Standards 2.12 and 3.112, the criteria which apply in noncriminal misbehavior cases and the restraints which may be imposed on juveniles alleged to have engaged in such conduct should differ from those applied and imposed in cases in which criminal conduct is involved, since considerations regarding protection of the community are not at issue. *See* Commentary to Standard 2.12. Subsequent standards in this chapter and in the chapter on adjudication indicate what some of those differences should be. *See also* 42 U.S.C. §5633(a)(12) (Supp. 1979).

Related Standards

2.12	Intervention for Noncriminal Misbehavior
2.13	Intervention to Protect Against Harm
2.21	Authority to Intervene (Law Enforcement Agencies)
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.231	Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.242	Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
3.111	Jurisdiction Over Delinquency
3.143	Criteria for Intake Decisions—Delinquency
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency

3.152 Criteria for Detention in Secure Facilities—Delinquency
3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.1810 Enforcement of Dispositional Orders—Delinquency

2.12 Intervention for Noncriminal Misbehavior

It is appropriate for society to intervene in the life of a juvenile and/or family when they are in need of services because of:

- **a. Disregard for or misuse of lawful parental authority;**
- **b. Violations of the state compulsory education laws;**
- **c. A juvenile's unauthorized absence from his/her approved place of residence; or**
- **d. A social or dysfunctional behavior by a juvenile resulting from his/her excessive use of alcoholic beverages.**

Intervention in such circumstances should be limited to the provision of services on a voluntary basis unless such services have been offered and unreasonably refused or have proven ineffective after a reasonable period of utilization, and referral to the intake unit is otherwise appropriate under the criteria set forth in Standard 2.222. Juveniles alleged to have engaged in noncriminal misbehavior should not be taken into custody in the circumstances described in Standards 2.232, 2.33, and 2.245.

Source:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 10.3-10.7 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

While fervid debate continues over whether the jurisdiction of the family court should include noncriminal misbehavior, *see* Commentary to Standard 3.112, there is substantial agreement that there must be some means available to provide services to families in conflict and children who run away from home, stay away from school, or abuse alcoholic beverages. *See, e.g.,* Arthur, "Status Offenders Need Help Too," 26 *Juvenile Justice* 3 (1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior,* 15 (tentative draft, 1976) [herinafter cited as IJA/ABA, *Non-Criminal Bisbehavior*]; National Council on Crime and Delinquency, 21 *Crime and Delinquency,* 77 (1975); R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973); and *Report of the Task Force, supra.*

This standard describes the instances in which intervention because of noncriminal misbehavior is appropriate. Consistent with the definition set forth in the introduction to this chapter, intervention in such cases should ordinarily be limited to the provision of services on a voluntary basis. Subsequent standards set forth the criteria which should be applied in determining whether to refer the matter to the intake unit, whether to place or retain a juvenile in custody, whether to submit the matter to the family court, and if there is an adjudication, what dispositional alternative should be selected, as well as specifying the rights and procedures which should apply. *See* Standards 2.222, 2.321. 2.232, 2.243, 2.342, 3.143, 3.153, 3.183, and 3.1811.

One criticism often levied against statutes authorizing intervention because of noncriminal misbehavior, is their breadth and vagueness. See, e.g., IJA/ABA, *Noncriminal Misbehavior, supra* at 9. Accordingly, this standard seeks to specify with greater clarity, the types of conduct which call for intervention. As with the other provisions in this series, the circumstances in which intervention would be permissible are closely related to, but less circumscribed than those set forth for the jurisdiction of the family court, *see* Standard 3.112, in order to limit the possibility of out-of-home placement or the provision of services on a nonvoluntary basis to the more serious cases without curtailing the opportunities to offer voluntary assistance programs.

Four sets of circumstances are described. The first addresses the type of family conflict which is generally labeled being incorrigible or beyond parental control. The standard, following the lead of the recommendation of the 1976 Standards and Goals Report regarding family court jurisdiction, includes both disregard for lawful parental authority by the child, and misuse of that authority by the child's parent, guardian, or primary caretaker. This is to permit juveniles to challenge "unreasonable and pointless parental demands" that are producing serious familial conflict, and to seek resolution of family problems through established channels rather than through acting out or running away. *See Report of the Task Force, supra* at Standard 10.6. It is anticipated that in most instances of intervention under paragraph (a), the family will be offered counseling and other necessary services. Only when there has been repeated disregard for or misuse of lawful parental authority and all available and appropriate noncoercive alternatives have been exhausted, should intervention result in referral to the intake unit and the family court. Standards 2.222, 2.321, 3.112, and 3.144.

Paragraph (b) recommends that intervention be authorized when a juvenile misses school without the consent of his/her parent, guardian, or primary caretaker. The inclusion of truancy as a ground for intervention is based on the traditional emphasis placed on education—forty-nine states and the District of Columbia have compulsory school attendance laws—and the need in contemporary society for at least basic reading and mathematical skills in order to earn a living and obtain decent food and shelter. While truancy may be one facet of a larger pattern of antisocial behavior, it may also be the result of unmet physical, mental, or emotional needs; an inability to afford adequate clothing or to pay for books and other fees; family problems; an inability to speak or understand English; or sometimes an inadequate and uninteresting educational program. *See* Children's Defense Fund, *Children Out of School in America* (1974). Most of these problems should be soluble without court intervention. Hence, it is the intent of the standard that the schools take primary responsibilty for resolving truancy problems including counseling the child and family, advising them of the availability of social and financial services, and providing alternative educational programs. When there is a pattern of repeated unauthorized absences or the juvenile is habitually absent from school, and all available and appropriate noncoercive alternatives have proven ineffective after a reasonable trial period or have been unreasonably refused, the matter would be cognizable by the family court. *See* Standards 2.222, 2.321, 3.112, and 3.144. Intervention because of actions by parents preventing their child from obtaining the education required by law is covered in Standard 2.13.

The third type of conduct identified in the standard is running away. It is estimated that more than 750,000 youths, both male and female, run away each year. The reasons for running away and the response required vary greatly, but the urgency of providing additional temporary shelter, counseling services, and other resources outside the juvenile justice system remains constant. *See* The Runaway Youth Act, 42 U.S.C. §5701 *et. seq.* (Supp. 1979); National Council of Jewish Women, *Symposium on Status Offenders,* 68-90 (1976); U.S. Department of Health, Education and Welfare, *The Incidence and Nature of Runaway Behavior* (1975). While law enforcement officers or other public officials may conduct investigations and searches immediately upon receipt of a report that a juvenile has run away, court involvement is limited to cases of repeated unauthorized absences for more than twenty-four hours from the place of residence approved by the juvenile's parents, guardian, or primary caretaker, and, as is the case with the circumstances described in paragraphs (a) and (b), in which all available and appropriate alternatives provided on a voluntary basis have been exhausted. *See* Standards 2.222, 3.112, and 3.144.

The fourth instance in which intervention is warranted is when a juvenile exhibits asocial or dysfunctional behavior as a result of excessive use of alcoholic beverages. As noted in the 1976 Standards and Goals Report:

> In 1971, the White House Conference on Youth reported that one of the most insidious problems of modern youth is the use and abuse of alcohol. The proportion of American children who drink to excess has substantially increased in the past few years. This excessive use of alcohol among youth presents a problem in its own right apart from the effect it may have on future adult behavior. *Report of the Task Force, supra* at Commentary to Standard 10.7.

In light of the increasing number of jurisdictions which have decriminalized public intoxication for adults, Standard 3.112 does not include alcohol abuse as one of the types of conduct cognizable under the jurisdiction of the family court over noncriminal misbehavior. However, this provision acknowledges that there must be some authority to provide public services to juveniles with alcohol problems. The standard limits intervention to those instances in which excessive use of alcoholic beverages results in a youth engaging in disruptive behavior or impairment of the youth's ability to carry on his/her normal activities at home, at school, or at work. While not condoning moderate use of alcoholic beverages by juveniles, paragraph (d) does not suggest a duty to intervene unless the specified conditions are present so as to avoid the type of over-reach which has plagued current juvenile justice system efforts to assist juveniles engaging in noncriminal misbehavior. However, nothing in the standard is intended to discourage the use and improvement of alcohol abuse education programs in the schools and community.

As noted earlier, the 1976 Standards and Goals Report recommends court jurisdiction over noncriminal misbehavior, but does not directly address the question of intervention. *Report of the Task Force, supra.* The IJA/ABA Joint Commission, on the other hand, while recommending that jurisdiction over such conduct be virtually eliminated, has proposed standards encouraging provision of "a broad spectrum of services reasonably designed to assist a juvenile in conflict with his/her family to resolve their [*sic*] conflict," and permitting law enforcement officers to take juveniles into "limited custody" whom they reasonably determine are in circumstances "which constitute a substantial and immediate danger to the juvenile's physical safety." IJA/ABA, *Noncriminal Misbehavior, supra* at Standards 2.1 and 4.1. These provisions are intended to cover children who have run away from home. *Id.* at Standard 3.1. Another volume of the IJA/ABA Standards encourages schools to take primary responsibility for reducing recurrent or extended unjustified student absences. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Schools and Education,* Standard 1.11 (tentative draft, 1977).

The National Advisory Committee recognized that the question of what is the proper response to noncriminal misbehavior, is one of the most difficult and volatile issues in the juvenile justice field. The retention of family court jurisdiction over noncriminal misbehavior proposed in Standard 3.112 is seen as an interim step which could ameliorate many of the concerns which have been raised regarding current practices until such time as there are sufficient voluntary services available for all families and children to obviate the need for court jurisdiction. Whether or not jurisdiction over status offenses is ultimately abolished, the identification and implementation of rational principles and criteria governing intervention decisions, and the creation and use of more and better services available to juveniles and families on a voluntary basis can greatly improve the quality and fairness of the administration of juvenile justice.

Related Standards

2.11 Intervention for Commission of a Delinquent Offense

2.13 Intervention to Protect Against Harm
2.21 Authority to Intervene (Law Enforcement Agencies)
2.222 Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.232 Criteria for Taking Juveniles into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.243 Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.31 Authority to Intervene (Nonlaw Enforcement Agencies)
2.321 Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.342 Procedures Following a Decision to Refer to Intake (Nonlaw Enforcement Agencies)
3.112 Jurisdiction Over Delinquency
3.144 Intake Criteria—Noncriminal Misbehavior
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior

Prevention Strategies

Focal Point The Individual:
Cor. R-1 Individual and Family Counseling
Cor. F-3 Protective Services
Cor. Ed-3 Supportive Services

Focal Point Social Institutions:
Cor. F-3 Crisis Intervention
Cor. Ed-3 Alternative Education

Focal Point Social Interaction:
Cor. J-2 Alternative Approaches to Juvenile Misconduct

2.13 Intervention to Protect Against Harm

It is appropriate for society to intervene in the life of a juvenile and/or family when the juvenile has no parent, guardian, relative, or other adult with whom he/she has substantial ties, who is willing to provide supervision and care, and:

a. **The juvenile's physical health is seriously impaired, or is likely to be so impaired;**
b. **The juvenile's emotional health is seriously impaired;**
c. **The juvenile has been sexually abused; or**
d. **The juvenile's parent, guardian, or primary caretaker is preventing him/her from obtaining the education required by law.**

Except when immediate medical care is required, intervention in such circumstances should not include removal of juveniles from their homes, or the provision of services on other than a voluntary basis unless the harm or risk of harm to the juvenile is cognizable under the jurisdiction of the family court described in Standard 3.113 and there is no other measure which will provide adequate protection.

Source:

None of the standards or reports reviewed address this issue directly. *See generally* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 5.3 and 12.9 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

There is little question that society has a responsibility to protect children against harm. But it is also clear that in too many instances, intervention has resulted in prolonged, often multiple out-of-home placements when less drastic alternatives could have provided as good or better protection. *See* J. Areen, "Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases," 63 *Geo. L. Rev.* 887, 912-916 (1975); A. Schuchter, *Child Abuse Intervention: A Prescriptive Package,* 7 (1976); 1 *CIP Alert,* 1 (National Council of Juvenile Court Judges, 1977). Hence, the critical issues appear to be: when is harm serious enough to warrant intervention, what types of services should be provided, and should services be provided on a voluntary or compulsory basis.

> In view of the present "state of the art," whatever is done by government in cooperation with private agencies in the area of dealing with maltreatment of children has to be viewed as experimental and requiring special safeguard against the kinds of "knowledge over-reach" and "legalistic overkill" that characterize current child protection efforts. In this regard, the purposes and goals of . . . [a] proposed model child abuse intervention system need to create a realistic and reasonable balance between the use of state authority to intervene . . . and the capacity of public and private resources for follow-up and treatment . . .; the legitimacy of state legal intervention to protect children from physical abuse, and the limitations of the legal system to positively contribute to changes in the behavior or abusive parents . . .; [and] the advantages of continuing ongoing "imperfect" parent-child relationships with those of the alternative placements that can be made available. Schuchter, *supra* at 22.

In setting forth the circumstances in which intervention is appropriate, this standard is broader than the jurisdictional limits of the family court in neglect and abuse cases recommended in Standard 3.113, in that the actual or threatened harm to a juvenile described in paragraphs (a) and (b) is not limited to that caused by the juvenile's parent or parental surrogate. Hence, a child who is injured in a traffic accident, or who is found wandering alone, or who is the victim of an assault outside the home may be assisted as well as the child who has apparently been neglected or abused. The standard is premised on the belief that in many cases, the counseling and other services necessary to protect a child from further harm can be provided on a voluntary basis. Thus, except in emergency cases when immediate medical care is required, *see* Standards 2.245 and 2.344, assistance should not include services offered on a nonvoluntary basis unless the actual or threatened harm is included under the grounds for the jurisdiction of the family court over neglect and abuse, and there is no other way to protect the child from the actual or threatened harm. *See* Standards 2.223, 2.322, 3.112, and 3.145. Similarly, a child should not be removed from his/her home unless the matter falls within the family court's jurisdiction under Standard 3.113(a)-(h) and removal is the only way in which the harm can be prevented. *See* Standards 2.233, 2.33, and 3.154. The continuity of relationships with parents or parental surrogates is often of critical importance and should not be disrupted unless necessary to protect against the specific harms listed in the standard. *See* J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* (2nd Ed. 1973); J. Bowlby, *Child Care and the Growth of Love* (1965).

The standard conditions intervention on the absence of a person with whom the juvenile has substantial ties who can protect the juvenile from one of the enumerated harms, or the unwillingness or inability of such a person to do so. Without both elements of this condition—i.e., lack of a protector and presence of a specific harm or threatened harm—intervention could occur whether or not a juvenile's parents are performing their duty to provide protection, or could be premised solely on the parent's, guardian's caretaker's lifestyle, values or morals, without regard to whether the juvenile's physical or emotional health was impaired or his/her physical health is demonstratively threatened. Similarly, the condition suggests that when older juveniles have demonstrated the ability to live on their own, it is not in the interest of the juvenile, the state, and in most instances, the parents, to attempt to intervene on grounds of parental abandonment or neglect.

Paragraph (a) would authorize intervention when a juvenile has suffered or is threatened with a physical injury which creates a substantial risk of death, disfigurement, impairment of bodily function, or bodily harm. As noted above, this provision is intended to cover juveniles injured or threatened with injury outside the home, as well as children who have apparently been abused by their parent, guardian, or primary caretaker, or left by their parent or parental surrogate in some inherently dangerous situation—e.g., playing in a room with exposed electrical wiring. However, any necessary assistance or services should be rendered on a voluntary basis unless emergency medical treatment is required; or the injury was or is likely to be inflicted nonaccidently by the juvenile's parent, guardian, or primary caretaker; or the juvenile's health is *seriously* impaired as a result of conditions created by his/her parent or parental surrogate or the failure of such persons to provide adequate supervision or protection. *See* Standard 3.113(b) and (d). The paragraph is also intended to permit intervention when the juvenile's physical health is endangered because his/her parents, guardian, or primary caretaker fail or are unable to provide him/her with the basic essentials of life. When the family is unable to provide food, shelter, clothing, or health care for financial reasons, the necessary services or funds should be provided through social service or welfare agencies without referral to the family court. Failure to provide should not be subject to the jurisdiction of the family court unless the child has been seriously harmed in order to discourage disruption of family life because of the parent's lifestyle or values, and to provide some guidance to judges asked to order an operation or other medical treatment for children whose parents object on religious grounds. *See Report of the Task Force, supra;* Institute of Judicial Administration American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* 37-38 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; E. Browne and L. Penny, *The Nondelinquent Child in Juvenile Court: A Digest of Case Law,* 9-13 (National Council of Juvenile Court Judges, 1974); and Note, "Court Ordered Nonemergency Medical Care for Infants," 18 *Clev.-Mar. L. Rev.* 196 (1969).

The second circumstance in which intervention is warranted is when the juvenile's emotional health is seriously impaired. This provision addresses the highly uncertain and difficult issue of emotional neglect. Many current neglect statutes have been criticized for failing to protect the mental or emotional health of children in the same manner as their physical health. *See Report of the Task Force, supra* at Commentary to Standard 11.12. However, there is little agreement on the definition of emotional neglect, even among mental health professionals. *See* Areen, *supra* at 933. Because of this uncertainty, the standard would require that there be serious impairment of a juvenile's emotional health before intervention is authorized.

> . . .[I]t is particularly essential that intervention with regard to emotional neglect be premised solely on damage to the child. Without actual damage it is extremely difficult both to predict the likely future development of the child and to assess the impact of intervention. M. Wald, "State Intervention on Behalf of Neglected Children: A Search for Realistic Standards," 27 *Stan. L. Rev.* 985, 1017 (1975).

A child whose mental health has been impaired could be brought to the attention of the family court pursuant its jurisdiction over civil commitments, *see* Standard 3.11, or if the juvenile's parents, guardian, or primary caretaker fail to provide or cooperate with treatment for the juvenile's mental health problem, pursuant to its jurisdiction over neglect and abuse. *See* Standard 3.113 (c).

Paragraph (c) provides for intervention when a juvenile has been sexually abused. This would permit provision of services to a juvenile who has been raped, molested, or who may have been a victim of parental sexual misconduct, regardless of whether the person allegedly responsible is prosecuted. There is growing awareness of and sensitivity to the needs of victims of sexual assault. *See, e.g.,* L. Brodyaga, M. Gates, S. Singer, M. Tucker, and R. White, *Rape and Its Victims: A Report for Citizens, Health Facilities, and Criminal Justice Agencies* (1975). Under the standards on adjudication, cases involving incest or other forms of intra-family sexual abuse may be submitted to family court pursuant to its jurisdiction over neglect and abuse or intra-family criminal offenses. *See* Standards 3.11, 3.113, and 3.117. However, they encourage an approach which seeks to assist the family rather than punishing the offender. *See* Commentary to Standard 3.113.

The final situation in which the standard urges that intervention be authorized is when a parent or parental surrogate may be preventing a juvenile from obtaining the education required by law. The standard is not intended to affect the rights of parents to limit, to some extent, their child's education for religious reasons. *See Yoder v. Wisconsin,* 406 U.S. 205 (1972). The term "required by law" is intended to refer to the compulsory attendance laws in force in all but one state. Although intervention is authorized, Standards 2.233, 2.33, and 3.54 would prohibit placing a child prevented from obtaining the education required by law in protective custody since his/her safety is not at issue. As with the other grounds for intervention, the matter should be submitted to the family court only when use of voluntary alternatives have failed. *See* Standards 2.33, 3.112, and 3.145. In such cases, ultilization of the court's jurisdiction over neglect appears to be a better means of protecting a juvenile's opportunity for an education than seeking to impose the criminal penalties contained in many compulsory school attendance laws. When the juvenile is absent from school without parental permission, the authority to intervene described under Standard 2.12—

Intervention for Noncriminal Misbehavior would be applicable. The term primary caretaker is used in this provision and throughout these standards to denote a person other than a child's parents, or public or private agency, institution or organization, which is providing or has taken on the responsibility for providing care and supervision of a child without having been designated the child's legal guardian.

As noted above, none of the materials reviewed in the course of preparing this standard delineate the circumstances in which society may intervene to protect a child, although they propose limits on removal or other forms of coercive intervention. For example, IJA/ABA, *Neglect, supra* at Standard 1.1, provides that coercive intervention should occur only when a child is suffering specific harms. The only situation in which a physician, law enforcement officer, or social services official would be authorized to take physical custody of a child or take other emergency measures over parental objections is when such custody is necessary to prevent the child's imminent death or serious bodily injury, and the child's parents are unable or unwilling to provide protection. *Id.* at Standard 4.1. The *Report of the Task Force, supra* states that the police "should have clear authority to intercede to provide necessary protection for children whose health or safety is endangered," but does not define the term "endangered" except for purposes of the jurisdiction of the family court. *Report of the Task Force, supra* at Standard 5.3. The proposed U.S. Department of Health, Education and Welfare, *Model Child Protection Act,* §§4-7, 9, and 16 (draft), 1977) specifies the circumstances in which a child abuse report should be filed; provides for investigation of such reports; and states that a law enforcement officer, a physician, and, optionally, a child protective services worker may take a child into protective custody if there is reasonable cause to believe that an imminent danger to the child's life or safety exists and there is no time to obtain a court order.

The National Advisory Committee recognized the complexity of intervention decisions in the child protection area and the competing values which must be taken into account. It concluded that setting out the circumstances and criteria for each of the intervention decisions more explicitly would assist in promoting greater understanding and improving the consistency and quality of intervention decisions.

Related Standards

2.11	Intervention for Commission of a Delinquent Act
2.12	Intervention for Noncriminal Misbehavior
2.21	Authority to Intervene (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.244	Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.31	Authority to Intervene (Nonlaw Enforcement Agencies)
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.33	Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.343	Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344	Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.145	Criteria for Intake Decisions—Neglect and Abuse
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.185	Criteria for Termination of Parental Rights
3.1812	Review of Dispositional Orders—Neglect and Abuse
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse

Prevention Strategies

Focal Point The Individual:
  Cor. F-1 Individual and Family Counseling
  Cor. F-3 Protective Services
Focal Point Social Institutions:
  Cor. F-3 Crisis Intervention

2.2 Intervention by Law Enforcement Agencies

2.21 Authority to Intervene

Law enforcement officers should be statutorily authorized to intervene in the life of a juvenile in the same circumstances as they are authorized to intervene in the lives of adults in the course of enforcing federal, state, and local laws defining criminal and traffic offenses.

In addition, law enforcement officers should be statutorily authorized to intervene in the lives of juveniles when they have a reasonable belief that any of the circumstances set forth in Standards 2.12 and 2.13 exist.

Sources:

See generally Uniform Juvenile Court Act, §13 (National Conference of Commissioners on Uniform State Laws, 1968); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior,* Standard 2.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Noncriminal Misbehavior*]; U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §5 (draft, 1977); and *Terry v. Ohio,* 392 U.S.1 (1968).

Commentary

While all the sets of standards and model legislation reviewed address when a juvenile may be taken into custody, none address the threshold question of when a law enforcement officer should be authorized to intervene. Similarly, most state statutes provide authority for police officers to take suspected delinquents into custody, but few provide an explicit basis for placing a child in "protective custody" or for intervening at all when there is no actual or threatened violation of the criminal law. *See* Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, *A Comparative Analysis of Standards and State Practices: Police-Juvenile Operations,* 27-36 (1977). The importance of this omission lies in the fact that a high percentage of police contacts with juveniles are not due to suspected criminal conduct and that relatively few interventions do or should result in taking a child into custody. Indeed, placement in custody should be the last alternative, taken only when informal resolutions or use of a citation or summons are not sufficient, and upon a stronger base of information than a street stop or preliminary investigation. *See* Standards 2.231-2.233, and 2.33. Hence, this provision, following the decision of the Supreme Court in *Terry v. Ohio,* urges that law enforcement officers be given explicit statutory authority to intervene when they have a "reasonable belief" that a juvenile has or is about to engage in a criminal act, has engaged in one of the forms of noncriminal misbehavior specified in Standard 2.12, or is in need of protection for one of the reasons set forth in Standard 2.13. A reasonable belief would also be required to stop a juvenile for traffic offense except in those states permitting general automobile safety and driver's license checks. According to the opinion in *Terry,* in determining whether a police officer's actions meet constitutional requirements:

> . . .[D]ue weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences, which he is entitled to draw from his experience. 392 U.S. at 27.
>
> . . .[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts, which taken together with natural inferences from these facts, reasonably warrant the intrusion. 392 U.S. at 21.

The facts necessary to form a reasonable belief may be gained from a complaint which has been filed, direct observation by the officer, or a reliable informant. *See Adams v. Williams,* 407 U.S. 143 (1972).

Although it is generally accepted that the police may intervene when a crime has been committed, questions have been raised whether it is appropriate for law enforcement officers to become involved in noncriminal misbehavior and neglect and abuse cases. *Report of the Task Force, supra* at 35. As is noted in the commentary to the IJA/ABA, *Neglect, supra* at 43, "realistically, there must be some means of dealing with the twelve-year-old who is prowling the subways at midnight or is otherwise in circumstances of immediate jeopardy," and the police are often the only public agency available on a 24-hour-per-day basis. It is anticipated that the rising educational level of police officers, coupled with the training recommended in Standards 1.421 and 2.253, the criteria recommended in Standards 2.221-2.223 to guide decisions to refer a juvenile to intake, and the criteria provided in Standards 2.231-2.233 to guide decisions to take a juvenile into custody will help to assure that these noncrime related but essential duties are carried out effectively, safely and fairly.

However, the recommendation to provide explicit authority for law enforcement agencies to intervene to protect juveniles against harm is not intended to preclude protective services agencies from establishing and maintaining a 24-hour-per-day, seven-day-per-week capacity to respond to reports that a juvenile is in danger. Police officers should ordinarily allow personnel from such agencies to handle child protection matters unless immediate action is required to safeguard the juvenile.

Standard 2.31 *et. seq.* outline the authority for and the criteria which should apply to intervention by nonlaw enforcement agencies.

Related Standards

2.11 Intervention for Commission of a Delinquent Act Delinquency (Law Enforcement Agencies)
2.12 Intervention for Noncriminal Misbehavior
2.13 Intervention to Protect Against Harm
2.221 Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222 Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.223 Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.231 Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.232 Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.233 Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.241 Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.242 Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.243 Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244 Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245 Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.246 Procedures for Fingerprinting and Photographing Juveniles (Law Enforcement Agencies)
2.247 Procedures Applicable to the Interrogation of Juveniles (Law Enforcement Agencies)
2.31 Authority to Intervene (Nonlaw Enforcement Agencies)

2.22 Decision to Refer to Intake

2.221 Criteria for Referral to Intake—Delinquency

Law enforcement agencies should promulgate written regulations for guiding decisions to refer to the intake unit a juvenile alleged to have committed an act which would be a crime or major traffic offense if committed by an adult. In determining whether referral would best serve the interests of the community and the juvenile, law enforcement officers should consider whether there is probable cause to believe the juvenile is subject to the jurisdiction of the family court over delinquency, and:

- **a. Whether a complaint has already been filed;**
- **b. The seriousness of the alleged offense;**
- **c. The role of the juvenile in that offense;**
- **d. The nature and number of contacts with the law enforcement agency and the family court which the juvenile has had, and the results of those contacts;**
- **e. The juvenile's age and maturity; and**
- **f. The availability of appropriate persons or services outside the juvenile justice system willing and able to provide care, supervision, and assistance to the juvenile.**

A juvenile should not be referred to the intake unit solely because he/she denies the allegations or because the complainant or victim insists.

Sources

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Standards, *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standards 1.6 and 1.8 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Probation*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 4.4, 5.7, 5.10, and 5.11 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems,* Standard 2.6 (c) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Police Handling*].

Commentary

The standards in this series set forth the bases on which decisions to refer a juvenile to the intake unit should be made. They draw a distinction between the decision to refer a youth to the next level of the juvenile justice system and the decision to take a youth into custody. *See* Standards 2.231-2.233, 2.321-2.322, 2.33, 3.141, and 3.151-3.154. It is anticipated that encouraging conscious and separate decisions on referral and custody will result in greater consistency, reduce referrals made solely because of the need to take a child into emergency protective custody, and avoid the taking of youths into custody in conjunction with a referral when a citation or summons would serve.

In so doing, these standards recognize that police officers do and should exercise discretion during the course of their duties. Recent FBI statistics indicate that 36.6 percent of juveniles taken into custody are handled within the department and released without referral to court. An additional 1.99 percent are referred to welfare agencies. W. Webster, *Crime in the United States: 1978,* 228 (1979). The percentage of youths stopped by the police and released without further official action is estimated to be even higher. *See Law Enforcement Assistance Administration, Program Announcement: Diversion of Youth from the Juvenile System,* 23 (1976). As stated by R. Kobetz and B. Bosarge in Juvenile Justice Administration, 117 (International Association of Chiefs of Police, 1973):

> The use of discretionary judgment by police officers . . . has been a subject of much debate both within the profession and in academic and legal circles since the Colonial era. The writers of the United States Constitution themselves were reluctant to grant police the use of too much administrative discretion in decisions to detain or arrest . . .
>
> Nevertheless, the nature of the police role in a democratic society demands the right of the police to exercise some discretionary judgment in the performance of their duties. The decision to arrest or not to arrest in a particular case cannot be specifically delineated in any manual of procedure due to the diversity of each individual case . . .

The police have become "quasi-judicial" officers because of the manner in which the concept of criminal justice is defined in the United States. While the concept of criminal justice theoretically refers to equal punishment by society for an offense against society, at the practical level "justice" attempts to establish a proper balance between competing claims.

Standards 2.221-2.224 focus on the factors to be weighed in achieving that balance for referral decisions by law enforcement officers. Standards 2.231-2.233 concern the consideration which must be balanced for decisions by law enforcement officers to take juveniles into custody. Standards 2.321-2.322 and 2.33 address referral and custody decisions made by other public officials.

Standard 2.221 sets forth criteria for referral decisions following interventions based on commission of an act of delinquency—i.e., a violation of an applicable federal, state, or local statute or ordinance which would be designated as criminal if committed by an adult, a traffic offense charged against a juvenile who was too young to obtain a license to drive at the time the offense is alleged to have occurred, as well as vehicular homicide, reckless driving, driving while under the influence of alcohol, narcotics, or dangerous drugs, leaving the scene of an accident and other traffic offenses for which there is a mandatory term of incarceration upon conviction. *See* Standard 3.111. The guidelines and criteria proposed in the standard should also apply to criminal type cases involving juveniles which are not cognizable by the family court—e.g., traffic offenses other than those listed above. The criteria specified are closely coordinated with those recommended for intake. *See* Standards 3.143-3.145.

Like many of the other provisions on discretionary decisions, the standard recommends the promulgation of written regulations to guide individual decision makers. These regulations should operationalize the recommended criteria and other procedures. Development of such guidelines has been proposed by most recent standards efforts. *Report of the Task Force, supra* at Standards 4.4 and 5.7; Kobetz and Bosarge, *supra* at 179-180; IJA/ABA, *Police Handling, supra* at Standard 2.6(c); National Advisory Committee on Criminal Justice Standards and Goals, *Police,* §§4.3 and 4.4 (1973); President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 19 (1967); ABA, *Standards Relating to the Urban Police Function,* §§4.1-4.5 (approved draft, 1973). These guides should apply to referral decisions made by officers int he field as well as those made at the stationhouse. To the greates extent possible, law enforcement agencies in areas served by a single family court should develop regulations cooperatively so as to promote consistency. In addition, the development process should include consultation and coordination with the family court, the agencies and programs affected by referral decisions, representative citizen task forces, and youth advocacy groups. As the Standards and Goals Task Force observed:

> Without adequate guidelines governing the use of discretion, the police handling of juveniles may be affected by such factors as race, attitude of the juvenile, type of department ("professional" v. "informal"), attitude of the victim and home situation of the minor. As the President's Commission on Law Enforcement and the Administration of Justice pointed out, this often leads to discriminatory and arbitrary decisions on the part of the police officer. *Report of the Task Force, supra* at 189.

The National Advisory Committee recommends the development of rules and guidelines governing referral decisions as an action which agencies can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

The standard lists seven points for consideration. The first is whether the officer has probable cause to believe that the juvenile is subject to the jurisdiction of the family court over delinquency. *See* Standard 3.111. No juvenile should be referred unless the officer determines that there is such probable cause to believe on the basis of direct observations, affidavits, or statements of the juvenile. The filing of a complaint prior to intervention would ordinarily supply the basis for that belief, though the officer would still need the same level of certainty that the juvenile named in the complaint was the same as the youth who had been stopped or for whom a warrant or summons was being sought.

If there is probable cause to believe the juvenile has committed a delinquent act or major traffic offense, the officer should consider the factors listed in paragraphs (a)-(f). No one of these factors is intended to predominate. Each should be considered and weighed against the others. For example, while the filing of a formal complaint necessarily limits the scope of an officer's discretion, it should not preclude a decision not to refer a juvenile if the offense was minor, the juvenile had no prior record, and his/her parents appear willing and able to provide the necessary guidance.

The first factor listed is the seriousness of the delinquent conduct, i.e., the nature and extent of harm to others resulting from the alleged offense. The provision approved by the IJA/ABA Joint Commission on which this standard is based, lists as specific criteria "whether the conduct caused death or personal injury, severity of personal injury, extent of property damage, value of property damaged or taken, whether property taken is recovered, and whether victim was threatened or intimidated by display of weapons, physical force or verbally." IJA/ABA, *Probation, supra* at 1.8(b)(1). Others have suggested that a serious offense be defined in terms of the felony-misdemeanor distinction or in terms of a list of specified offenses. *See, e.g.,* Ferster, Courtless, and Snethen, "Separating Official and Unofficial Delinquents: Juvenile Court Intake," 55 *Iowa L. Rev.* 874 (1970). However, juveniles who commit some acts that are technically felonies or one of the enumerated offenses may not constitute such a threat to society as to warrant judicial handling of the matter on that basis. The President's Commission on Crime in the District of Columbia, *Report,* 661 (1966); Kobetz and Bosarge, *supra* at 247-248.

The second criterion is the role which the juvenile allegedly played in the offense. The IJA/ABA, *Police Handling* provision proposes that when a group of juveniles is alleged to have committed a delinquent act together, equity requires that they be treated alike. Hence, in a leader-follower situation, if the police officer, on the basis of the seriousness of the prior record and other factors, determines that the leader of the group should be referred to the intake unit, the entire group should ordinarily be referred. While not intending to denigrate the importance of equal treatment, the standard goes no further than recommending role as an appropriate point to consider.

The third factor is the nature, number, and result of prior contacts with the law enforcement agency and the family court. Information regarding past referrals and the juvenile's response to them appears essential if diversion is to be retained and encouraged as an alternative. Use of such records does imply that the threshold decision on whether a juvenile should or should not be referred may be based, in part, on unproven allegations. This use appears little different than the commonly accepted practice of using arrest records in determining dispositions and sentences in delinquency and criminal proceedings. To assure that incomplete or inaccurate information is not used, and that unwarranted assumptions are not made from records of prior contacts, the standard requires that the results of any prior contact—not only the nature and number of those contacts—be considered. *See* Standard 1.54. Standard 1.531 would permit access to identifiable information maintained by a law enforcement agency by officers of that agency when it is essential to achieving a law enforcement purpose. The Standards and Goals Task Force and a number of commentators and standards groups have endorsed consideration of a juvenile's prior contacts with the law enforcement agency and the family court. *See Report of the Task Force, supra* at Standard 5.11; IJA/ABA, *Probation, supra* at §1.8(b); Kobetz and Bosarge, *supra* at 248;

The fourth consideration is the juvenile's age and maturity. The fact that a particular juvenile is ten or seventeen should not in and of itself be determinative whether or not to recommend the filing or a petition. It must be weighed together with all the other factors. *See* IJA/ABA, *Probation, supra* at Standard 1.8(b); *Report of the Task Force, supra* at Standard 5.11.

The final criterion is the availability of persons (including the juvenile's parents) and/or services outside the juvenile justice system which are suited and can provide the juvenile with any necessary assistance. The unavailability of services should not necessarily imply that a youth should be referred to the intake unit when other criteria suggest that referral to services or simply dropping the matter is the proper disposition.

The juvenile's attitude is not listed as a factor which should be considered. While the suspect's attitude has been identified as a key element in actual arrest and referral decisions, *see* D. Besharow, *Juvenile Justice Advocacy,* 107-108 (1974); R.M. Ariessohn, "Offense v. Offender in Juvenile Court," *Juvenile Justice* 2 (1972), as observed by the President's Commission on Law Enforcement and Criminal Justice:

> Can the police, or anyone else for that matter, accurately detect the difference between feigned and genuine resolve to mend one's ways, or between genuine indifference to the law's commands and fear engendered defiance? President's Commission, *supra* at 17; *but see* Kobetz and Bosarge, *supra* at 89 and 146; *Report of the Task Force,* supra; IJA/ABA, *Probation, supra.*

The provision makes clear, however, that law enforcement officers should not refer youths to the intake unit solely because they assert their innocence or because the complaining witness objects to other alternatives.

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
2.11	Intervention for Commission of a Delinquent Act
2.21	Authority to Intervene (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.231	Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.241	Procedures Following a Decision not to Refer to Intake (Law Enforcement Agencies)
2.242	Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.248	Form of Complaint
3.111	Jurisdiction over Delinquency
3.143	Criteria for Intake Decisions—Delinquency

Prevention Strategies

Focal Point Social Interaction:

Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct

2.222 Criteria for Referral to Intake—Noncriminal Misbehavior

Law enforcement agencies should promulgate written regulations for guiding decisions to refer to the intake unit individuals alleged to have engaged in noncriminal misbehavior.

In determining whether referral best serves the interests of the juvenile, the family, and the community, law enforcement officers should consider whether there is probable cause to believe that the individual is subject to the jurisdiction of the family court over noncriminal misbehavior, and:

- **a. Whether a complaint has already been filed;**
- **b. The seriousness of the alleged conduct and the circumstances in which it occurred;**
- **c. The nature and number of contacts with the law enforcement agency and the family court which the individual and his/her family has had;**
- **d. The outcome of those contacts; and**
- **e. The availability of appropriate persons or services outside the juvenile justice system.**

Juveniles should not be referred to the intake unit solely because they deny the allegations or because the complainant or victim insists.

Sources:

None of the standards or model legislation reviewed address this issue directly. *See generally* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standards 1.6 and 1.8 (tentative draft, 1977).

Commentary

Serious questions have been raised about the large number of juveniles alleged to have engaged in noncriminal misbehavior—i.e., unlawful conduct which would not be a crime if committed by an adult—who have been referred to the family court. *See,* e.g., National Council of Jewish Women, *Symposium on Status Offenders: Proceedings May 17-19, 1976,* 8-13 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior, 1-21 (tentative draft, 1977); but see* Arthur, "Status Offenders Need Help Too," 26 *Juvenile Justice* 3 (1975). Consistent with Standard 3.112—Jurisdiction over Noncriminal Misbehavior—the criteria set forth in this standard seek to limit referrals to the intake unit to those instances in which all available and appropriate noncoercive alternatives to assist the juvenile and the juvenile's family have been exhausted, and to encourage communities to meet their obligations to juveniles and families by developing a full range of voluntary services.

Like Standard 2.221, the provision recommends that law enforcement agencies should issue written regulations to assist individual officers in making referral decisions. The regulations should apply to referral decisions made by officers in the field as well as those made at the stationhouse. To the greatest extent possible, law enforcement agencies in areas served by a single family court should develop regulations cooperatively so as to promote consistency. The development process should also include consultation and coordination with the family court, the agencies and programs affected by referral decisions, representative citizen task forces, and youth advocacy groups. *The National Advisory Committee recommends the development of rules and guidelines governing referral decisions as an action which agencies can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

The standard urges that in making the decision whether or not to refer a noncriminal misbehavior matter to the intake unit, a law enforcement officer must first determine that there is probable cause to believe that the conduct falls within the limits of the jurisdiction of the family court over noncriminal misbehavior. Hence, the law enforcement officer must be aware of facts and circumstance "sufficient to warrant a prudent . . . [person] in believing that . . ."

- a. There has been a pattern of repeated unauthorized absences or habitual unauthorized absences from school by a juvenile subject to the compulsory education laws, if any, of the state; or
- b. There have been repeated unauthorized absences for more than twenty-four hours from the place of residence approved by the juvenile's parents, guardian, or primary caretaker; or
- c. There has been repeated disregard for or misuse of lawful parental authority; or
- d. There have been acts of delinquency by a juvenile below age ten. *See* Standard 3.112; *Beck v. Ohio,* 379 U.S. 89, 91 (1964).

Accordingly, interventions based, for example, on a juvenile's having missed a single day of school without permission, or on asocial or dysfunctional behavior by a juvenile because of excessive use of alcoholic beverages, cannot result in referral of the juvenile to the intake unit. *See* Standards 2.112 and 3.112.

The six criteria listed for consideration following the determination of probable cause are parallel to those recommended for referral decisions in delinquency cases. *See* Standard 2.221 and Commentary. However, in the context of this standard, the term "seriousness" in paragraph (b) refers to such factors as the length of the juvenile's absences from home or from school and the nature of the demand disregarded or misused, rather than to the extent of harm caused to others. In addition, paragraphs (c) and (d) focus on the family rather than the juvenile alone, since many instances of noncriminal misbehavior are a result of family conflict or require the cooperation of the entire family for their resolution. Like the criteria listed in Standard 2.221, no one factor is intended to predominate. Each should be considered and weighed against the others.

Finally, it should be noted that the standard attempts to balance the need of the officer for sufficient information on which to base a decision, and the juvenile's and family's rights to privacy. Most police forces have neither the time, expertise, nor resources to perform extensive social history investigations, and detailed information about the juvenile's and family's economic status, educational level, health, interests, and activities is unnecessary for and possibly a hindrance to making a referral decision. By specifying the basic factors which should be taken into account by law enforcement officers at the point of initial intervention, the standard seeks to assure the fairness and consistency of referral decisions and limit the use of coercive measures in noncriminal misbehavior cases to the greatest extent possible.

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
2.12	Intervention for Noncriminal Misbehavior
2.21	Authority to Intervene (Law Enforcement Agencies)
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.234	Form of Complaint
2.241	Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.243	Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
3.112	Jurisdiction Over Noncriminal Misbehavior
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior

Prevention Strategies

Focal Point Social Interaction:

Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct

Focal Point Social Institutions:

Cor. F-3	Crisis Intervention
Cor. Ed-2	Alternative Education

Focal Point The Individual:

Cor. F-1	Individual and Family Counseling
Cor. Ed-3	Supportive Services

2.223 Criteria for Referral to Intake—Neglect and Abuse

Law enforcement agencies should promulgate written regulations for guiding decisions to refer to the intake unit juveniles alleged to have been neglected or abused, and the parents, guardian, or primary caretaker of such juveniles. Those regulations should be developed in close cooperation with the agencies responsible for providing protective services.

In determining whether referral best serves the interests of the juvenile, the family, and the community, law enforcement officers should consider whether there is probable cause to believe that the family is subject to the jurisdiction of the family court over neglect and abuse, and:

a. Whether a complaint has already been filed; and

b. The seriousness of the alleged neglect or abuse and the circumstances in which it occurred.

Sources:

None of the standards or model legislation reviewed address this issue directly. *See generally* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 5.3 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

Although protective services agencies should develop and maintain a capacity to respond to reports of child abuse or neglect at any hour, day or night, seven-days-per-week, the police in many communities are often called upon to intervene when a child is endangered, within or outside the home, because they are the only agency available on a 24-hour basis. *See generally Report of the Task Force, supra;* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior,* 42 (tentative draft, 1977). This standard recommends the criteria which law enforcement officers should use in deciding to refer a neglect or abuse matter to the intake unit following intervention. Unlike Standard 2.233—Criteria for Taking Juveniles into Emergency Protective Custody—this provision is written in terms of neglect or abuse rather than juveniles "alleged to have been harmed or in danger of harm," since only cases involving juveniles who are endangered by acts or omissions of their parents, guardians, or primary caretaker are subject to the family court's jurisdiction over neglect and abuse. *See* Standard 3.113. However, pursuant to the recommendations in Standards 2.13 and 2.21, law enforcement officers may intervene in a broader range of cases—e.g., children who have become separated from their parents in a crowd—and even take them into emergency protective custody in order to take them home or to an appropriate nonsecure shelter or medical facility, without invoking the jurisdiction of the family court so long as services other than emergency medical treatment are provided on a voluntary basis. *See* Standards 2.244 and 2.245. This distinction explains the use of the probable cause level of certainty in this provision, and the lower, reasonable belief level of certainty in Standard 2.233. Whenever practicable, law enforcement officers should permit personnel from agencies responsible for providing protective services to make referral decisions when it is alleged that a juvenile has been neglected or abused.

Like the other provisions in this series, Standard 2.223 recommends that law enforcement agencies should issue written regulations to assist individual officers in making referral decisions. *See* Standards 2.221 and 2.222. The regulations should apply to referral decisions made by officers in the field as well as those made at the stationhouse. To the greatest extent possible, law enforcement agencies in areas served by a single family court should develop regulations cooperatively so as to promote consistency. The development process should also include consultation and coordination with the family court, the agencies and programs affected by referral decisions, representative citizen task forces, and youth advocacy groups. Close coordination with the agency or agencies responsible for providing protective services to children is of particular importance. *The National Advisory Committee recommends the development of rules and guidelines governing referral decisions as an action which agencies can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

Only two factors are listed for consideration by law enforcement officers in making referral decisions: whether a complaint has been filed and the seriousness of the alleged neglect or abuse and the circumstances in which it occurred. As in the other provisions on referral decisions, neither factor is intended to predominate. Thus, the absence of a formal written complaint, *see* Standard 2.234, should not preclude an officer from referring a case to the intake unit when there is probable cause to believe a child has been seriously abused or neglected. The term "seriousness" is intended to refer to the severity of the harm to the juvenile and to the likelihood and immediacy of any threatened harm as defined in Standard 3.113.

It was the conclusion of the National Advisory Committee that police officers should not be required to consider such factors as the number and results of prior contact with the law enforcement agency, child protective services agency or family court which the family has had, the availability of appropriate services outside the juvenile justice system, and the willingness of the family to accept those services, in making referral decisions in neglect and abuse cases. *But see* Standard 2.233. The determination of whether, in light of such factors, a case should be presented to the family court rather than referred to community services offered on a voluntary basis, should be left to protective services agency and intake personnel who have the specialized training and experience necessary to select the least restrictive approach which will adequately protect the interests of the juvenile, the parents and the community. *See* Standards 2.322 and 3.145. However, this is not intended to prohibit law enforcement officers from referring a family directly to services when the severity of the alleged neglect or abuse does not warrant submission of the case to the intake unit.

Related Standards

2.13	Intervention to Protect Against Harm
2.21	Authority to Intervene (Law Enforcement Agencies)
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.241	Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.244	Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.248	Form of Complaint
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.145	Criteria for Intake Decisions—Neglect and Abuse

Prevention Strategies

Focal Point Social Interaction:
Cor. J-1 Diversion
Focal Point Social Institutions:
Cor. F-3 Crisis Intervention
Focal Point The Individual:
Cor. F-3 Protective Services

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2.23 Decisions to Take a Juvenile Into Custody

2.231 Criteria for Taking a Juvenile Into Custody—Delinquency

Whenever practicable, an order issued by a family court judge should be obtained prior to taking into custody a juvenile alleged to have committed a delinquent act.

An order should not be issued nor a juvenile taken into custody without an order unless there is probable cause to believe that the juvenile falls within the jurisdiction of the family court over delinqnency described in Standard 3.111, and it is determined that issuance of a summons or citation would not adequately protect the jurisdiction or process of the family court; would not adequately protect the juvenile from an imminent threat of serious bodily harm; or would not adequately reduce the risk of the juvenile inflicting serious bodily harm on others or committing serious property offenses prior to adjudication.

In making this determination, the family court judge or law enforcement officer should consider:

- **a. The nature and seriousness of the alleged offense;**
- **b. The juvenile's record of delinquency offenses, including whether the juvenile is currently subject to dispositional authority of the family court or released pending adjudication, disposition, or appeal;**
- **c. The juvenile's record of willful failures to appear following the issuance of a summons or citation; and**
- **d. The availability of noncustodial alternatives, including the presence of a parent, guardian, or other suitable persons able and willing to provide supervision and care for the juvenile and to assure his/her compliance with a summons or citation.**

Written rules and regulations should be developed to guide custody decisions in delinquency matters.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standard 3.2, and *Standards Relating to Police Handling of Juvenile Problems,* Standards 2.4, 2.5(B), and 3.2(A) and (B) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Interim Status,* and IJA/ABA, *Police Handling,* respectively]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973); *Gerstein v. Pugh,* 420 U.S. 103, 112-113 (1975).

Commentary

Although exact figures are not yet available, it is estimated that on any given day over 12,000 juveniles are held in detention or correctional facilities pending adjudication or disposition. *Children in Custody: Advance Report on the 1977 Census of Public Juvenile Facilities,* 3 (1979). Recent studies have shown that the rate of detention and the reason for detention vary greatly from jurisdiction to jurisdiction. Standards 2.231-2.233 seek to define the purposes of detention and the principles and criteria which should guide decisions to take a young person into custody. Subsequent standards address the rights and procedures which should apply when a decision to take a juvenile into custody has been made. *See* Standards 2.242, 2.245, 3.151, 3.152, 3.155, and 3.158. It is the intent of these standards that most juveniles subject to the jurisdiction of the family court over delinquency be released to the custody of their parents, guardian, or primary caretaker without imposition of any substantial restraints on liberty and, when this is not possible, that the least restrictive alternative be employed.

This standard sets forth the basic principles governing decisions to take into custody juveniles alleged to have committed a delinquent act. It is intended to apply to the decision by a family court judge whether or not to issue an order to take a juvenile into custody as well as to decisions by law enforcement officers in the field. In keeping with current practice, the term "take into custody" is used rather than arrest. While the constitutional limits imposed on arrests apply to the taking of juveniles into custody in delinquency proceedings, *see* D. Besharov, *Juvenile Justice Advocacy,* 103-104 (1974), and IJA/ABA, *Police Handling, supra* at 60-62, the term "may be viewed as an attempt to mollify the harshness of the criminal system, to free the child from the stigma of arrest, or to enable him to state on employment questionnaires, for example, that he has never been arrested." S. Davis, *Rights of Juvenile: The Juvenile Justice System*, 46 (1974). Moreover, the generic term "take into custody" encompasses the concept of protective custody traditionally applicable to juveniles. IJA/ABA, *Police Handling, supra* at 60-62.

The standard expresses a clear preference for obtaining a court order before taking a juvenile into custody. As stated by the Supreme Court in *Johnson v. United States*, 333 U.S. 10, 13-14 (1948):

> The point of the Fourth Amendment, which often is not grasped by zealous officers, is not that it denies law enforcement the support of usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.

The "whenever practicable" test for obtaining a warrant is taken from *Terry v. Ohio*, 392 U.S. 1, 20 (1968). Consistent with the recommendation against use of quasi-judicial decision makers, warrants are to be issued by family court judges and not a referee or magistrate. *See* Standard 3.124.

This standard applies to delinquency cases the "probable cause" level of certainty constitutionally required before an adult alleged to have committed a criminal offense may be arrested. *Gerstein*, 420 U.S. at 111. *See also Cupp v. Murphy*, 412 U.S. 291 (1973); and *Beck v. Ohio*, 379 U.S. 89 (1964). The Supreme Court has defined probable cause "in terms of facts and circumstances sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *Gerstein*, 420 U.S. at 111-112; *Beck*, 379 U.S. at 91.

The determinations recommended in the second paragraph of the standard are intended to induce judges and law enforcement officers to make a conscious choice between custody and use of a summons or citation "based on factors relevant to the necessity of arrests." American Bar Association, *Standards Relating to Pretrial Release*, 32 (approved draft, 1968). Hence, the provision specifies that a juvenile alleged to have engaged in delinquent conduct should only be taken into custody if no less restrictive means—i.e., citations or summons—would be sufficient to prevent the juvenile from fleeing or being taken from the jurisdiction; to safeguard a juvenile who is in circumstances which present an immediate danger of serious physical injury; or to prevent juveniles alleged to be delinquent from seriously harming others or committing serious property offenses such as arson or burglary in the first degree. *See, e.g.*, IJA/ABA, *Interim Status, supra;* National Council on Crime and Delinquency, *Standards and Guides for Detention of Children and Youth* (1971); *Uniform Juvenile Court Act*, Section 14 (National Conference of Commissioners on Uniform State Laws, 1968); *Model Act for Family Courts*, §20 (1975); and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 12.7 (1976) [hereinafter cited as *Report of the Task Force*].

Although preventive detention has been a highly controversial issue in adult criminal cases, the imposition of high bail has often been used to achieve the same purpose. Preventive detention of juveniles, in one form or another, is allowable under the juvenile codes of a substantial number of states and has been approved by the National Advisory Committee on Criminal Justice Standards and Goals, *Courts*, 298-299 (1973) (to protect person or properties of others); the *Model Act for Family Courts, supra* (release presents a clear and substantial threat of a serious nature to the person or property of others); the *Uniform Juvenile Court Act* (to protect the person and property of others); *Report of the Task Force, supra* (to prevent infliction of bodily harm on others or intimidation of any witness); and the IJA/ABA, *Interim Status, supra* (to prevent infliction of serious bodily harm on others). *But see* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections*, Section 8.2(7) (1973). Because of the difficulty of predicting future conduct, the adverse impact of incarceration on a juvenile, and the cost of detention, subsequent standards limit placement in secure detention facilities to a few specified situations. *See* Standards 3.151 and 3.152. In addition, those standards provide for an independent decision by the intake officer whether juveniles taken into custody by a law enforcement officer should be detained, and, if so, in what type of facility they should be placed. Intake officers' decisions to detain a juvenile in either a secure or nonsecure facility should be subject to mandatory review by a family court judge within twenty-four hours. *See* Standard 3.155. If the juvenile remains in custody after the initial hearing, review hearings before a family court judge should be held at least every seven days to assure that detention or emergency custody is still warranted and to encourage prompt adjudication. *See* Standard 3.158.

Like Standard 2.221 *et. seq.*, this provision and those that follow recognize that police officers are constantly and properly called upon to exercise discretion in making decisions whether or not to take a juvenile into custody. *See* Commentary to Standard 2.221; and Kobetz and Bosarge, *supra* at 117. However, as with the decision to refer to intake, guidance is needed to assure consistency and fairness. Hence, the standard sets forth criteria to assist in applying the principles discussed above and recommends the promulgation of written rules and regulations to govern custody/release decisions. Most recent standards-setting groups have recommended the development of such regulations to guide custody decisions, *see, e.g.*, Kobetz and Bosarge, *supra;* IJA/ABA, *Police Handling, supra; Report of the Task Force, supra* at Standards 4.4 and 5.7; President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*, 19 (1967); *Standards Relating to the Urban Police Function*, §§4.1-4.5 (approved draft, 1973), but only the IJA/ABA, *Interim Status, supra* specifies the content of those regulations.

As with the other recommendations in these standards regarding the development of guiding rules, law enforcement agencies in areas served by a single family court should develop regulations cooperatively so as to promote consistency. In addition, the development process should include consultation and coordination with the family court, the agencies and programs affected by referral decisions, representative citizen task forces, and youth advocacy groups. *The National Advisory Committee recommends the development of rules and guidelines governing decisions to take a juvenile into custody as an action which can be taken immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

The criteria recommended in this provision follow closely those contained in Standard 3.151 regarding the decision to intake officers to retain a juvenile accused of committing a delinquent offense in custody pending adjudication. No one factor is intended to predominate. While it is anticipated that a citation or summons will be issued when a juvenile is alleged to have committed a traffic offense, misdemeanor, or nonserious felony in keeping with the policy of using the least restrictive alternative, the standard does not mandate release in such cases. Neither does it require custody in serious felony cases. Each of the criteria including the availability of noncustodial alternatives should be considered and weighed before a decision is reached. On the other hand, the provision adopted by the IJA/ABA Joint Commission requires release when the alleged offense is punishable by a sentence of less than one year "unless the juvenile is in need of emergency medical treatment, requests protective custody, or is in a fugitive status," and encourages release in other cases unless there is "clear and convincing evidence" that the juvenile is a fugitive, has a recent record of willful failures to appear, or that the juvenile is charged with a violent felony and is already under the jurisdiction of a juvenile court. IJA/ABA, *Interim Status, supra* at Standard 5.6. This standard also differs from the IJA/ABA provisions by not limiting the taking of a juvenile into protective custody to situations in which the juvenile requests such custody. *Id.* at Standard 5.7. While juveniles should not be placed in a secure facility for protective reasons unless they request it, *see* Standard 3.152, there may be situations in which a juvenile involved in delinquent activity is clearly endangered. A law enforcement officer should not be precluded from taking the child into protective custody in such a situation, though the custody decision and subsequent actions should be guided by the criteria and procedures set forth in Standards 2.233, 2.242, 2.244, and 2.245.

After taking a juvenile into custody, a law enforcement officer should immediately explain to the juvenile his/her right to remain silent, right to an attorney, and the fact that any statements made may be used against him/her. These explanations should be in language which the juvenile is able to understand. Following these warnings, the juvenile should be taken to the intake unit without delay unless emergency medical treatment is required. *See* Standard 2.242. In addition, the juvenile's parents, guardian, or primary caretaker should be notified of the reasons the juvenile has been taken into custody, the juvenile's whereabouts, and the rights to which the juvenile is entitled. Finally, a report explaining the reasons for intervention, referral, and custody should be prepared and a copy given to the intake unit. *See* Standard 2.242. As noted above, procedures and criteria to govern the intake process are recommended in Standards 3.141-3.147, and 3.151-3.158.

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
2.11	Intervention for Commission of a Delinquent Act
2.21	Authority to Intervene (Law Enforcement Agencies)
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.242	Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.246	Procedures for Fingerprinting and Photographing Juveniles (Law Enforcement Agencies)
2.247	Procedures Applicable to the Interrogation of Juveniles (Law Enforcement Agencies)
3.111	Jurisdiction Over Delinquency
3.132	Representation by Counsel—For the Juvenile
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152	Criteria for Detention in Secure Facilities—Delinquency
3.155	Initial Review of Detention Decisions
3.171	Rights of the Parties

2.232 Criteria for Taking a Juvenile Into Custody—Noncriminal Misbehavior

Whenever practicable, an order issued by the family court judge should be obtained prior to taking into custody a juvenile alleged to have engaged in noncriminal misbehavior.

An order should not be issued nor a juvenile taken into custody without an order unless there is probable cause to believe that the circumstances set forth in Standard 2.12 exist, and it is determined that there is no person willing and able to provide supervision and care for the juvenile and the juvenile is unable to care for himself/herself, or that issuance of a citation or summons would not adequately protect the juvenile from an imminent danger of serious bodily harm.

In making this determination, a family court judge or law enforcement officer should consider:

a. The nature and seriousness of the alleged conduct;
b. The juvenile's age and maturity;
c. The nature and number of contacts with the law enforcement agency or the family court which the family has had;
d. The outcome of those contacts;
e. The existence of circumstances which present an imminent threat of serious physical injury to the juvenile; and
f. The availability of noncustodial alternatives including the presence of a parent, guardian, or other suitable person able and willing to provide supervision and care for the juvenile.

Written rules and regulations should be developed to guide custody decisions in noncriminal misbehavior matters.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.8 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior,* Standard 2.1; *Standards Relating to Interim Status,* Standard 5.7; *Standards Relating to Police Handling of Juvenile Problems,* Standard 2.5(c)(1) and (2) (tentative drafts, 1977) [hereinafter cited as IJA/ABA, *Noncriminal Misbehavior,* IJA/ABA, *Interim Status,* and IJA/ABA, *Police Handling,* respectively].

Commentary

This standard sets out the criteria applicable in determining whether a child accused of engaging in noncriminal misbehavior should be taken into custody. Noncriminal misbehavior is defined in Standards 2.12 and 3.112. It is intended to apply to the decisions by family court judges whether or not to issue an order to take a juvenile into custody, as well as to decisions by law enforcement officers in the field. In keeping with current practice, the term "take into custody" is used rather than arrest. *See* Commentary to Standard 2.231. The generic term "take into custody" encompasses the concept of protective custody traditionally applicable to juveniles. *See* IJA/ABA, *Police Handling, supra* at 60-62. The term is wholly appropriate as applied here to cases of noncriminal misbehavior, since under these standards the sole purpose for police intervention in such cases is to protect the child from bodily harm or lack of adequate care. *See also* Standard 2.12; *cf.* Standard 2.231.

The broader arguments for and against the assertion of any form of juvenile court jurisdiction over noncriminal misbehavior are covered in the Commentary to Standard 3.112. The National Advisory Committee—like the Task Force but unlike the IJA/ABA Joint Commission—recommends retention of a highly circumscribed version of family court jurisdiction over children who display noncriminal misbehavior. *See* Standard 3.112; *accord, Report of the Task Force, supra* at Standards 10.1 and 10.3-10.8; *contra,* IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 1.1. In keeping with that position, strict limits are placed on the manner and occasions in which a child may be taken into custody for alleged acts of misbehavior that do not violate the criminal law. Briefly, these safeguards include: obtaining a custody order "whenever practicable;" requiring probable cause to believe that an act of noncriminal misbehavior has been committed before a child is taken into custody; permitting the child to be taken into custody only if no less restrictive alternative will protect him/her from imminent bodily harm, or if the child suffers from inadequate care; and providing a set of specific criteria to hedge in the custody decision.

The standard expresses a clear preference for obtaining a court order before taking a juvenile into custody. *See Johnson v. United States,* 333 U.S. 10, 13-14 (1948), and the Commentary to Standard 2.231. A custody order must be obtained "whenever practicable." *See Terry v. Ohio,* 392 U.S.

1 (1968). Consistent with the recommendation against the use of quasi-judicial decision makers, such orders are to be issued by family court judges and not a referee or magistrate. *See* Standard 3.124.

In addition, the standard applies to noncriminal misbehavior cases the "probable cause" level of certainty which is constitutionally required before an adult alleged to have committed a criminal offense may be arrested. *See* Standard 2.231; *Gerstein v. Pugh, supra,* 420 U.S. at 111; *see also Cupp v. Murphy,* 412 U.S. 291 (1973); and *Beck v. Ohio,* 379 U.S. 89 (1964). The Supreme Court has defined probable cause in terms of facts and circumstances "sufficient to warrant a prudent man in believing that the [suspect] had committed or was committing an offense." *Gerstein v. Pugh,* 420 U.S. 103, 111-112; *Beck,* 379 U.S. at 91. Courts considering the issue since *In re Gault,* 387 U.S. 1 (1967) have consistently required probable cause in delinquency cases before a child may be taken into custody. *See* Standard 2.231 D. Besharov, *Juvenile Justice Advocacy,* 104-105 (1974). There appears to be little justification for applying a lesser standard than "probable cause" to custody decisions in noncriminal mishavior cases. *See* Standard 3.155.

It should be noted that although "probable cause" is required before a child is taken into custody, Standard 2.222 would permit an officer to intervene—short of the point of custody—upon a "reasonable belief" that the youth has misbehaved noncriminally. For example, an officer may intervene—short of taking custody—to escort a child home or back to school. *See* Standards 2.12(b) and (c), or to suggest that an intoxicated and rowdy teenager should stop drinking and "cool off." *See* Standard 2.12(d). However, if at any point the child is no longer free to leave the officer's presence, the point of custody is reached and "probable cause" is required to justify custody.

As indicated above, this standard would permit an officer to take a child directly into custody for alleged noncriminal misbehavior, where it is not practicable to seek a custody order from a judge. Professor Samuel Davis, on the other hand, has argued that law enforcement officers should never take a child into custody without a court custody order where the child is accused merely of noncriminal misbehavior, rather than with a criminal offense, unless the juvenile's safety is in immediate peril. S.M. Davis, *Rights of Juveniles: The Juvenile Justice System,* 48 (1974). *Accord,* New York Family Court Act, §1024 (McKinney Supp. 1974). The National Advisory Committee believes that the restrictions set out in this standard and in Standard 2.12 provide adequate safeguards against possible abuse.

The standard also urges that a juvenile alleged to have engaged in noncriminal misbehavior should only be taken into custody when no less restrictive alternative will protect him/her from imminent bodily harm, or when there is no person willing to provide supervision and care for the child, and the child is unable to care for him/herself. Standard 3.153 provides that children charged with noncriminal misbehavior should only be placed by the court in the least restrictive shelter facility, and never in a secure detention facility. *See* §42 U.S.C. 5633(a)(12) (Supp. 1979). The Task Force is in general accord: police authority to take a child charged with noncriminal misbehavior into custody "should not include the authority to place that youth in a police detention," *Report of the Task Force, supra* at Commentary to Standard 5.6; only the least restrictive shelter care placement may be utilized, *id.* at Standards 5.6 and 12.8; and even shelter care should not be used unless "clearly necessary to protect the child from bodily harm and unless there is no other available alternative. *Id.* at 12.8. A similar philosophy is expressed in IJA/ABA, *Police Handling, supra* at Standards 2.5(C)(1) and (2). Although the IJA/ABA Joint Commission rejected formal court jurisdiction over children alleged to have engaged in noncriminal misbehavior, IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 1.1, it nonetheless sanctions "limited" policy custody of such children. This form of "limited custody" would permit an officer to take custody of a child for up to six hours—to transport the child home or to a "temporary nonsecure residential facility"—where the officer "reasonably determines" that custody is required to safeguard the child from a "substantial and immediate danger" to his/her physical safety. *Id.* at 2.1.

Finally, to guide individual custody decisions, the standard lists a set of criteria and recommends that written rules and regulations be developed. *See* Commentary to Standard 2.231. In making the custody decision, the criteria to be applied are similar to those recommended in Standards 3.153 and 2.222. No one factor is intended to predominate. The existence of circumstances which present an imminent threat of serious physical injury to the juvenile is added in this standard as a criterion to emphasize that custody in noncriminal misbehavior cases is intended to protect solely the child—not the community at large. *See* IJA/ABA, *Interim Status, supra* at Standard 5.7.

In developing rules and regulations to guide decisions to take a child into custody, law enforcement agencies in areas served by a single family court, should work together to make their policies as consistent as possible. The development process, especially for the provisions addressing noncriminal misbehavior, should also include consultation and coordination with the family court, the agencies and programs affected by custody decisions, representative citizen task forces, and youth advocacy groups. The National Advisory Committee recommends the development of rules and guidelines governing decisions to take a juvenile into custody, as an action which can be taken immediately, without a major recollection of resources, to improve the administration of juvenile justice.

After taking a juvenile into custody, a law enforcement officer should immediately explain to the juvenile his/her right to remain silent, and rights to an attorney, and the fact that any statements made may be used against him/her. These explanations should be in language which the juvenile is able to understand. Following these warnings, the juvenile should be taken to the intake unit without delay unless emergency medical treatment is required, and the juvenile's parents, guardian, or primary caretaker should be notified of the reasons the juvenile has been taken into custody, of the juvenile's whereabouts, and of the rights to which the juvenile is entitled. A report explaining the reasons for intervention, referral and custody should be prepared and a copy given to the intake unit. *See* Standard 2.243.

As noted above subsequent standards prohibit placement of juveniles alleged to have engaged in noncriminal misbehavior in any secure detention facility, and strictly limit placement even in shelter facilities to instances of danger of imminent bodily harm. *See* Standard 3.153. In addition, these standards provide for an independent decision by the intake officer whether such juveniles taken into custody by a law enforcement officer should be placed in a shelter facility, and, if so, in what type of facility they should be placed. If the juvenile is placed in a shelter facility, review hearings before a family court judge should be held at least every seven days "or whenever new circumstances warrant an earlier review," to assure that custody is still warranted and to encourage prompt adjudication. *See* Standard 3.158.

Related Standards

1.53 Confidentiality of Records
1.531 Access to Police Records
1.532 Access to Court Records
1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
2.12 Intervention for Noncriminal Misbehavior
2.21 Authority to Intervene (Law Enforcement Agencies)
2.222 Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.231 Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.233 Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.243 Procedures Following Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
3.112 Jurisdiction Over Noncriminal Misbehavior
3.153 Criteria for Detention and Release—Noncriminal Misbehavior

2.233 Criteria for Taking a Juvenile Into Emergency Protective Custody

Whenever practicable, an order should be obtained from a family court judge prior to taking into emergency custody a juvenile alleged to have been harmed or to be in danger of harm.

An order should not be issued nor a juvenile taken into emergency protective custody without an order unless there is a reasonable belief that any of the circumstances set forth in Standard 2.13 (a)-(c) exist, and it is determined that no other measure can provide adequate protection or that issuance of a summons or citation is inadequate to protect the jurisdiction or process of the family court.

In making this determination, a family court judge or law enforcement officer should consider:

- **a. The nature and seriousness of the harm or threatened harm;**
- **b. The juvenile's age and maturity;**
- **c. The nature and number of contacts with the law enforcement agency, child protective service agency, or family court which the juvenile or family has had;**
- **d. The presence of a parent, guardian, relative, or other person with whom the juvenile has substantial ties, willing and able to provide supervision and care; and**
- **e. The family's record of willful failures to appear following issuance of a summons or citation.**

Written rules and regulations should be developed to guide decisions regarding taking juveniles into emergency protective custody. These regulations should be developed in close cooperation with the agencies responsible for providing protective services.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 5.3, 12.9, and 12.10 (1976); [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems,* Standard 2.5 (c) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Police Handling*].

Commentary

Although agencies responsible for providing protective services for children should develop and maintain the capacity to respond to reports that a juvenile is in danger at any time, day or night, seven-days-per-week, in many communities law enforcement officers are frequently called upon to make the often difficult decision to take a child into emergency protective custody. While law enforcement personnel should ordinarily allow protective service agencies to handle such matters, *see* Standard 2.33, this standard sets out principles and criteria to assist family court judges and police officers in those communities in which law enforcement agencies are the only entities able to respond to such emergency situations.

A child may be taken into emergency protective custody under this standard only when there is a reasonable belief that a child has been sexually abused, that a child's emotional or physical health is seriously impaired, or that a child's physical health is likely to become seriously impaired, *see* Standard 2.13 (a)-(c), and where it appears that no other measure short of custody can adequately protect the child or preserve family court jurisdiction. *See* Standards 2.33 and 3.152.

The term "emergency protective custody" means such temporary care and control as is appropriate to the condition of the endangered child. For example, emergency protective custody includes initial emergency care by a law enforcement or protective services officer, and the emergency placement of a child in a hospital or other facility designed for the care of such children. *See* Standard 2.245.

Most instances of emergency protective custody will involve alleged abuse or neglect. However, this and related standards also cover other situations in which a child's health is seriously impaired or endangered, such as instances in which small children have become separated from their parents in a crowd or a traffic accident in which the child is injured. *See Report of the Task Force, supra.* In such cases, emergency protective custody will be required solely to take the child home or to a hospital, and no court action will be necessary.

Like the other provisions in this series, Standard 2.233 states a preference for obtaining an order from the family court before taking a juvenile into custody, but would not preclude action by law enforcement officers when there is no time to obtain such an order. *Accord,* U.S. Department of Health, Education and Welfare, *Proposed Model Child*

Protection Act, §9(a) (1977); *Report of the Task Force, supra* at Standard 12.9. A somewhat lesser degree of certainty is required before a family court should issue an order or a law enforcement officer is authorized to take a youth into emergency custody than would be required under Standards 2.231 or 2.232 regarding custody in delinquency or noncriminal misbehavior cases. *See Uniform Juvenile Court Act*, §13 (National Conference of Commissioners on Uniform State Laws, 1968); *Proposed Model Child Protection Act, supra;* A. Sussman and S. Cohen, *Reporting Child Abuse and Neglect: Guidelines for Legislation*, §6 (1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior*, Standards 2.1 and 6.1 (tentative draft, 1977); *but see* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Abuse and Neglect*, Standard 4.1(A) (tentative draft, 1977). The substitution of the need for a reasonable belief rather than probable cause, and the protective intent of the custody should not be employed as a means of evading the requirements for custody decisions in delinquency and noncriminal misbehavior cases. *See* Standards 2.231 and 2.232. Removing children from their home or even taking them into protective custody outside the home can often prove extremely traumatic for both the child and the parent. *See Report of the Task Force, supra* at Commentary to Standards 12.9 and 12.10; J. Areen, "Intervention Between Parent Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases," 63 *Geo. L. Rev.* 887, 889 (1975); J. Bowlby, *Child Care and the Growth of Love* (2nd Ed. 1965); A Schuchter, *Prescriptive Package: Child Abuse Intervention*, 18 (1976). Hence, there must be demonstratable facts and circumstances supporting the belief that the harm or threat of harm to the child is serious, *see* Standard 2.13 (a)-(c), and that there are no other means of providing protection or preventing the juvenile from fleeing or being taken from the jurisdiction. *But cf. Proposed Model Child Protection Act, supra.*

The criteria listed in paragraphs (a)-(d) are intended to promote consistency and to assure that all alternatives are considered before a decision is made to take a juvenile into custody. No one of the criteria is intended to predominate. Each should be weighed and balanced against the others in order to determine the least intrusive and restrictive approach which will adequately protect the safety of the child. Finally, the standard provides that written rules and regulations be issued applying the listed principles and criteria to the circumstances faced by law enforcement officers in the course of their duties.

Under no circumstances should a law enforcement officer keep any child in emergency protective custody for longer than four hours. Within four hours—and preferably much sooner—the officer must either release the child pursuant to Standard 2.241, or refer the child for intake as neglected or abused pursuant to Standards 2.23 and 2.244, or take the child to an appropriate medical facility if the child needs medical care immediately. *See* Standard 2.245.

When a juvenile is brought to the intake unit, Standard 3.154 provides for an independent determination by the intake officer regarding what type of emergency protective measures are required. If emergency custody is continued, Standard 3.157 calls for a hearing before a family court judge no more than twenty-four hours after the juvenile was taken into custody to review whether there is probable cause to believe that the juvenile is neglected or abused, and if so, whether emergency protective custody is necessary. Standard 3.158 would require periodic review, and provides for modification and appeal of decisions to place a juvenile in emergency protective custody.

Like the other provisions in this series, Standard 2.233 urges that written rules or regulations be developed to assist in making difficult decisions regarding emergency protective custody. To the greatest extent possible, law enforcement agencies in areas served by a single family court should develop regulations cooperatively so as to promote consistency. The development process should also include consultation and coordination with the family court, protective services and other agencies affected by emergency custody decisions, representative citizen task forces, and youth advocacy groups. *The National Advisory Committee recommends the development of operational guidelines governing emergency custody decisions as an action which can be taken, without a major reallocation of resources, to improve the administration of juvenile justice.*

Related Standards

2.13	Intervention to Protect Against Harm
2.21	Authority to Intervene—Law Enforcement Agencies
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.231	Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244	Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.31	Authority to Intervene—Nonlaw Enforcement Agencies
2.33	Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases

2.234 Form of Citation, Summons, and Order to Take Into Custody

A citation should direct the individual named therein to report to the intake unit within three calendar days. The citation should specify the individual's name and address; the name and address of the person, if any, to whose care and supervision the individual is being released; the time, manner, and place of conduct which the individual is alleged to have committed; the date of issuance; and the address and telephone number of the intake unit. In addition, the citation should explain the rights to which the individual is entitled. Citations should be signed by the issuing officer as well as by the individual to whom it is issued or the person, if any, to whose care and supervision the individual is released.

A summons should specify the issuing court and the legal provisions alleged to have been violated, in addition to the directions, information, and explanations contained in a citation.

An order to take an individual into custody, should authorize law enforcement officers throughout the jurisdiction to carry out its edict. The order should include the same information and explanations contained in a summons except that if the name or address of the individual is unknown, the order should contain a description by which that person can be identified with reasonable certainty.

A copy of an issued citation, a served summons, or an executed order should be provided to the intake unit as promptly as possible.

Sources:

See generally Uniform Rules of Criminal Procedures, §222 (1974); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards on Interim Status,* Standards 2.13 and 2.14 (tentative draft, 1977).

Commentary

In recommending a form for summonses, citations, and orders to take individuals into custody, the standard seeks to assure that the documents clearly inform the persons to whom they refer of their rights and responsibilities and of the basis for issuing the document. The provision is written to be applicable to the adults as well as juveniles who may be subject to the jurisdiction of the family court. *See* Standards 3.112 and 3.113. The selection of three days as the response period for persons receiving a citation or summons is in keeping with the stringent time periods set for family court proceedings in Standard 3.161 and the seven-day-per-week availability of intake services implied in Standards 3.141-3.157.

The form recommended for a summons is the same as that for a citation except for the addition of the name of the issuing court and the reference to the law or ordinance alleged to have been violated, and the deletion of the signature requirements. *But see* Uniform Rules of Procedure, *supra* at Rule 222(a).

The form of the custody order is similar, though provision is made for instances in which the name of the person to be taken into custody is unknown. A supporting affidavit is not required since the time, manner, and place of the conduct appear on the face of the order itself. Nothing in the paragraph is intended to prohibit a judge from specifying the time or manner for executing the order.

The final paragraph of the standard provides for prompt notification to the intake unit that an individual has been served with an order or summons or issued a citation, in order to facilitate review of the case by the intake officer. If a person receiving a citation or summons fails to appear within the three-day period, the intake officer or a law enforcement officer or other appropriate official may apply for an order to take that person into custody, if such an order would be in accordance with the principles and criteria set forth in Standards 2.231-2.233 or Standard 2.33.

Related Standards

2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.231	Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.242	Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)

2.243 Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244 Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245 Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.321 Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.322 Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.33 Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.342 Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
2.343 Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344 Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.111 Jurisdiction Over Delinquency
3.112 Jurisdiction Over Noncriminal Misbehavior
3.113 Jurisdiction Over Neglect and Abuse
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parents
3.141 Organization of Intake Units
3.164 Petition and Summons

2.24 Rights and Procedures

2.241 Procedures Following a Decision Not to Refer to Intake

Individuals who are not referred to intake by a law enforcement officer should be released without condition or ongoing supervision. Although those individuals and their families may be referred or taken to community resources offering services on a voluntary basis.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 5.7 (1976) [hereinafter cited as *Report of the Task Force*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration, 166-167 (International Association of Chiefs of Police, 1973).*

Commentary

This standard recommends against the use of informal probation by law enforcement agencies. This is in accord with the position adopted by the Standards and Goals Task Force, *Report of the Task Force, supra;* Kobetz and Bosarge, *supra;* and the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems,* Standard 2.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Police Handling*]. It is also consistent with the limitations on informal probation recommended in the standards on intake. *See* Standards 3.141-3.142; *see also* President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 19 (1967); and National Advisory Committee on Criminal Justice Standards and Goals, *Police,* Standard 4.3 and Commentary (1973). Kobetz and Bosarge, *supra* at 166 outline the reasons underlying this policy as follows:

1. Voluntary police probation has no legal basis.
2. While the average police-juvenile officer is expected to possess training and skills in the proper handling of juvenile offenders, he is not a psychologist nor a social worker and should not be expected or allowed to serve as one.
3. A police department, because of limited manpower and resources, must utilize its available juvenile officers to the best advantage; therefore, to maximize manpower resources, the police department should limit its police-juvenile worker to delinquency prevention, apprehension, and referral.
4. It is not the function of the police department to develop treatment resources if the community lacks them; the police, however, should cooperate with other community agencies in bringing the need for such resources to the attention of the municipal governing body.
5. Police departments are not appropriate settings for treating children; many children with behavioral problems become more aggressive when faced with authority such as that represented by the police.
6. Voluntary police probation programs duplicate the work of other agencies, such as the probation department and social welfare; it is the objective of a community juvenile justice system, of which the police are a component, to avoid duplication of services.

Although the standard urges that law enforcement agencies not provide direct services nor induce an individual to utilize services under the threat of being referred to the intake unit and the family court, it is not intended to prohibit police officers from transporting a youth to a runaway shelter, or an injured child to a hospital, or an intoxicated juvenile to a voluntary alcohol treatment program. *See* Standards 2.243 and 2.245. Neither is it intended to discourage law enforcement agencies from working for the establishment of needed community services. *Report of the Task Force, supra* at Standards 6.2-6.5; IJA/ABA, *Police Handling, supra* at Standard 2.5; and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Youths Service Agencies,* Standard 4.6 (tentative draft, 1977).

No formal record should be retained of contacts which do not result in a youth being referred to the intake unit. As is stated in the Commentary to Standard 1.52 in formulating recordkeeping policies, the potential benefits of collecting and retaining information must be weighed against the potential injury to privacy and related protected interests. It was the

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conclusion of the National Advisory Committee that the danger of misinterpretation and misuse of, or misplaced emphasis on cursory records arising from incidents not warranting referral to the intake unit under the criteria set forth in Standards 2.221-2.223, substantially outweighed the possible benefits of formal written notification to parents that their child has had contact with the police. *But see Report of the Task Force, supra* at Standard 5.1. When notice of a police contact would serve to encourage the family to play a preventative role, it can be given informally by either the intervening law enforcement agency or an agency or program providing services on a voluntary basis to which a juvenile has been referred.

Standards 2.242-2.247 set forth the rights and procedures which are applicable when a juvenile has been referred to the intake unit and/or taken into custody by law enforcement personnel. Standards 2.341-2.344 apply the same principles to nonlaw enforcement agencies authorized to intervene under Standard 2.31.

Related Standards

2.21	Authority to Intervene (Law Enforcement Agencies)
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.244	Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.341	Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
3.141	Organization of Intake Units

Prevention Strategies

Focal Point Social interaction:

Cor. S-1	Diversion.
Cor. S-2	Alternative Approaches to Juvenile Misconduct

2.242 Procedures Following Referral to Intake—Delinquency

Immediately upon referring to the intake unit or taking into custody juveniles alleged to be subject to the jurisdiction of the family court over delinquency, law enforcement officers should explain in language understandable by such juveniles, their right to remain silent, their rights to an attorney, the fact that any statements they make may be used against them in court, their right to stop answering questions at any time, and their right to have present a parent, guardian, primary caretaker, or another adult as provided in Standard 2.247(d).

A law enforcement officer taking into custody a juvenile alleged to be delinquent should bring that juvenile to the agency's juvenile unit or directly to the intake unit without delay, unless the juvenile is in need of emergency medical treatment. The officer should also assure that the juvenile's parent, guardian or primary caretaker is notified of the fact that the juvenile has been taken into custody, of the reasons therefor, of the juvenile's whereabouts, and of the rights to which the juvenile is entitled.

A juvenile taken to a law enforcement agency's juvenile unit should be brought to the intake unit without delay and in any case within four hours of being taken into custody unless released earlier.

A report should be prepared explaining the reasons for intervention, referral and if relevant, custody, and a complaint filed unless the victim or complaining witness has done so already. A copy of the report and the complaint should be promptly given to the intake unit.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 4.5 and 5.8 (1976) [hereinafter cited as *Report of the Task Force*]; *Model Act for Family Courts,* §19(b)(4) (1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pretrial Release,* Standard §32.2(d); and *Standards Relating to Interim Status,* Standard 5.3(F) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Pretrial Release,* and IJA/ABA, *Interim Status,* respectively].

Commentary

This standard specifies the responsibilities of law enforcement officers in handling a juvenile, alleged to be delinquent, who is being referred to the intake unit and taken into custody. The provision recommends that officers advise the juvenile immediately of his/her rights, prepare a report, and file a complaint if one has not been filed already. The officer should promptly deliver the juvenile to the agency's juvenile division or the intake unit and notify the juvenile's parents, guardian, or primary caretaker. In cases where the juvenile is in need of emergency services, the applicable procedures are delineated in Standard 2.245.

The standard requires that juveniles taken into custody or referred to the intake unit must be warned that they have a right to remain silent; that any statement they make may be used against them in court; that they have a right to be represented by counsel and to have counsel present during any questioning; that if they cannot afford counsel the court will appoint counsel free-of-charge; and that they may stop answering questions at any time. The United States Supreme Court has long required that these "*Miranda* warnings" be given to adults who are taken into custody for alleged criminal violations. *Miranda v. Arizona,* 384 U.S. 436 (1966). Since the Supreme Court's decision *In re Gault,* 387 U.S. 1 (1967), almost every court which has reached the question has held that juveniles taken into custody for alleged acts of delinquency are entitled to the same safeguards announced in *Miranda. See* S.M. Davis, *Rights of Juveniles: The Juvenile Justice System,* 89 (1974). Likewise, every major previous standards-setting group has mandated that the full *Miranda* warnings must be administered to juveniles taken into custody for alleged delinquent acts. IJA/ABA, *Interim Status, supra* at Standard 5.3(A), *Report of the Task Force, supra* at Standard 5.8, and also Standards 4.5, 5.6, and 5.12; National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Standard 8.1(2)(1) (1973). *Cf. Model Act for Family Courts, supra* at Sections 25 and 26. The National Advisory Committee is in full accord with this clear majority position affording *Miranda* rights to juveniles for reasons discussed much more fully in the Commentary to Standard 2.247. Consequently, under these standards any statements taken from an accused juvenile in the absence of *Miranda* warnings may not be introduced in court against the juvenile at a fact-finding hearing during the government's case-in-chief. *Miranda v. Arizona, supra.*

See Standard 2.247; *cf. Harris v. New York,* 401 U.S. 222 (1971).

As delineated in this standard, the *Miranda* warning takes into account the special circumstances of a juvenile in custody—namely, that the law enforcement officer also inform the accused youth that he/she has a right to have present a parent, guardian, primary caretaker, or some other "friendly adult," as provided for in Standard 2.247(d). The Commentary to Standard 2.247 explains more fully the reasons for this additional admonition, and the positions taken by previous standards-setting groups.

It is of prime importance that the law enforcement officer explain all the required rights in terms which will make them comprehensible to a juvenile. If the juvenile's primary language is not English, the officer should arrange to have the explanations made in the juvenile's primary tongue.

Almost all recent standards-settings groups and model legislation have called for notification of a juvenile's parents when the juvenile has been taken into custody. *Report of the Task Force, supra* at Standard 5.6; *Model Act for Family Courts, supra.* This notice is used for two primary purposes: to inform the parent, and to assess the availability of a parent or parent surrogate. Availability of a parent or other responsible adult is a major factor used by courts, police, and intake officers in determining whether a juvenile should or should not be detained. These standards follow this general rule by identifying parental availability to care for a youth as a key factor in determining whether a youth should be released or detained. *See* Standards 2.231 and 3.151. Moreover, the juvenile in custody is often in need of the support and advice which a parent can give. The explanation to the parent of the juvenile's rights can only enhance the meaningfulness of such parental advice.

The reasons for referral or custody should be clearly explained in a written report prepared by the law enforcement officer and given to the intake unit. The *Model Act for Family Courts, supra* requires that a written statement of the reasons for taking the juvenile into custody be given both to the intake unit and to the court, and that the parent, guardian, or caretaker be notified orally and in writing. *Model Act for Family Courts, supra* §19(b)(4). The report contemplated by this standard serves as a basis for further investigation by the law enforcement agency, by the intake unit, and by the family court section of the prosecutor's office. The report will also provide a means for monitoring referral and custody decisions in order to promote consistency and even-handed treatment. *See* IJA/ABA, *Pretrial Release, supra* at §2.2(d). Although the standard does not require that this written report (as opposed to oral notice) be given immediately to the child's parent or caretaker, the officer's report is discoverable by counsel for the youth under Standard 3.155. *See also* Standard 3.167.

The standard urges that a juvenile taken into custody be presented to the intake unit "without delay and in any case, within four hours." The IJA/ABA Joint Commission arrived at a two-hour time limit within which the child must be presented to the intake unit. Like these standards, the Joint Commission also gives the intake officer the option to disagree with the police officer and release rather than detain the juvenile. IJA/ABA, *Interim Status, supra* at Standard 5.3(F). The purpose of a time limit is to guard against the holding of juveniles in police custody solely for reasons of convenience or for prolonged interrogation. The National Advisory Committee believes that in setting a four-hour outer limit upon the duration of police custody will prove more feasible than two hours. Even in rural areas with remote intake facilities, four hours should give police more than ample time to notify parents and to determine whether the child in custody should be referred for intake. It is unrealistic to recommend against taking a juvenile to the police station house at all, given the widespread use of police juvenile bureaus. However, the time in police custody should be held to a minimum. The specific four-hour maximum lends precision missing from current statutory schemes, the most specific of which merely require presentation to intake "immediately," "forthwith." *See* IJA/ABA, *Interim Status, supra* at Commentary to Standard 5.3 (citing Ferster and Courtless, "Juvenile Detention in an Affluent County," 11 *Fam. L. Q.* 3, 17 (1972).

Juveniles should not be held for any length of time in a secure juvenile detention facility pending transport to the intake unit unless the factors set forth in Standard 3.152 apply. These standards would, of course, completely bar even the temporary holding of any juvenile in a police "lock up," or in any facility with adult detainees or adult offenders. *Accord,* IJA/ABA, *Interim Status, supra* at Standard 5.4; *Report of the Task Force, supra,* 42 U.S.C. §§5633(a)(12) and (13) (Supp. 1979).

Related Standards

2.11	Intervention for Commission of a Delinquent Act
2.21	Authority to Intervene (Law Enforcement Agencies)
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.231	Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.241	Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.243	Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.248	Form of Complaint
2.251	Police-Juvenile Units
3.132	Representation by Counsel—For the Juvenile
3.141	Organization of Intake Units
3.142	Review of Complaints
3.171	Rights of the Parties

2.243 Procedures Following Referral to Intake—Noncriminal Misbehavior

Immediately upon referring to the intake unit or taking into custody individuals alleged to be subject to the jurisdiction of the family court over noncriminal misbehavior, law enforcement officers should explain, in language understandable by such individuals, their right to remain silent, their rights to an attorney, the fact that any statements they make may be used against them in court, their right to stop answering questions at any time, and their right to have present a parent, guardian, primary caretaker, or another adult as provided in Standard 2.247(d).

A law enforcement officer taking into custody an individual alleged to have engaged in noncriminal misbehavior should bring him/her to the agency's juvenile unit or directly to the intake unit without delay, unless the individual is in need of emergency medical treatment. If the individual in custody is a juvenile the officer should also assure that the juvenile's parents, guardian, or primary caretaker are notified of the fact that the juvenile has been taken into custody, of the reasons therefor, of the juvenile's whereabouts, and of the rights to which the juvenile is entitled.

An individual taken to a law enforcement agency's juvenile unit should be brought to the intake unit without delay and in any case within four hours of being taken into custody unless released earlier.

Juveniles alleged to have engaged in noncriminal misbehavior should never be placed in a secure detention facility or a facility in which they will have regular contact with accused or convicted adult offenders.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 5.6, 4.5, 5.8, 12.9 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juveniles*, Standards 2.4 and 2.5 (tentative draft, 1977), and *Standards Relating to Noncriminal Misbehavior*, Standard 2.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Police Handling*, and IJA/ABA, *Noncriminal Misbehavior*, respectively].

Commentary

This standard sets out the responsibilities of law enforcement officers upon referring to intake or taking into custody juveniles alleged to have engaged in one of the forms of noncriminal misbehavior described in Standard 3.112 and adults alleged to have repeatedly misused their parental authority. Briefly summarized, it recommends that officers advise the individual immediately of his/her rights, prepare a report, and file a complaint if one has not already been filed. When a person has been taken into custody, the officer should deliver that individual to the intake unit promptly, and in any case within four hours, and if the individual is a juvenile, should notify his/her parents, guardian or primary caretaker. In cases in which the juvenile is in need of emergency services the applicable procedures are delineated in Standard 2.245. In short, this standard applies to persons alleged to have engaged in noncriminal misbehavior, the same rights and procedures during custody and intake which Standard 2.242 applies to juveniles charged with delinquency.

None of the other standard-setting groups or model acts fully addresses the procedures which apply following intervention in noncriminal misbehavior cases. The IJA/ABA Joint Commission prescribes certain limited procedures (such as notice to parent) when a child's physical safety requires "limited" short-term police custody, or where a child has run away from home. IJA/ABA, *Noncriminal Misbehavior, supra* at Standards 2.1 *et. seq.*, and 3.1 et. seq. However, the IJA/ABA Joint Commission removes status offenders from the jurisdiction of the family court. *Id.* at Standard 1.1. The *Uniform Juvenile Court Act* includes jurisdiction over "unruly" children and does not distinguish between the procedures which apply to juveniles who are alleged to be unruly and those alleged to be delinquent. *Uniform Juvenile Court Act*, Section 16 (National Conference of Commissioners on Uniform State Laws, 1968). The only procedural distinction in the *Uniform Juvenile Court Act* is a prohibition upon placing unruly, disobedient children in "a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent." *Id.* The *Report of the Task Force, supra* addresses some but not all questions regarding postintervention procedures in noncriminal misbehavior cases. For example, the Task Force does not appear to address directly whether a child accused of noncriminal misbehavior must be administered *Miranda*-type warnings. *See Report of the Task Force, supra* at Standard 5.8 and Commentary. However, the Task Force does provide for "immediate" delivery of such children to the intake unit, and prohibits police from holding nondelinquent youths (expect certain "runaways") in secure police detention facilities. *See Report of the Task Force, supra* at Commentary to Standards 5.9 and 12.8.

This standard explicitly extends to individuals alleged to have engaged in noncriminal misbehavior, the constitutional requirements delineated in *Miranda v. Arizona*, 384 U.S. 486 (1966), by requiring law enforcement officers to explain to detained persons that they have a right to remain silent, the right to an attorney, that any statements made may be used against them, that they may stop answering questions at any time, and that they may have present a parent, guardian, primary caretaker, or another "friendly" adult as provided in Standard 2.247(d). This is consistent with the recommendation in Standard 3.171 that the parties in noncriminal misbehavior cases should be entitled to the same rights as those applicable in delinquency proceedings. Although these standards prohibit the confinement of a youth found involved in noncriminal misbehavior in any "secure" detention or correction facility, *see* Standards 3.153, 3.183, 4.21, and 4.26, the consequences of noncriminal misbehavior still include both the stigma of being labeled as disobedient and unruly or, for the child under ten, as a child who commits delinquent acts. *See* Standard 3.112(d). The child alleged to have engaged in noncriminal misbehavior also faces the possibility of placement for up to six months in a "nonsecure" residential facility. *See* Standard 3.183. Furthermore, while these standards depart from such practice, *see* standards 3.112 and 3.183, a large proportion of the resources of American family courts have historically been devoted to the detention and incarceration of "status offenders." *See* Commentary to Standard 3.112. Stigma is also involved for adults subject to a noncriminal misbehavior proceeding. Accordingly, there appears to be no sound basis for according persons accused of noncriminal misbehavior less stringent pretrial procedural protections than those accorded to alleged delinquents. Applying the *Miranda* requirements to noncriminal misbehavior cases will also reduce the possibility that jurisdiction over noncriminal misbehavior might be used by some police officers as a means to circumvent the strictures placed upon deliquency investigations.

In light of the fact that police intervention with unruly juveniles often does not result in referral to intake, *see* D. Besharov, *Juvenile Justice Administration*, 108 (1975), this standard does not preclude bringing a juvenile to the police station for a very brief status determination by the officer, rather than directly to the intake facility. However, a juvenile taken into custody must be presented to the intake unit "without delay and in any case, within four hours" after the juvenile's apprehension. The time in police custody should be held to a minimum. The four-hour time limit is intended to guard against the holding of juveniles in police custody solely for reasons of convenience or for prolonged interrogation. *See* Commentary to Standard 2.242 and Standard 2.247. As a similar safeguard, the IJA/ABA, *Noncriminal Misbehavior, supra* requires that if a juvenile's physical safety requires that a law enforcement officer must take the child into "limited custody," such custody should last no more than six hours beyond the time of the child's initial contact with the officer and that such custody should not involve bringing the child to a police station. IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 2.1.

Notice to a child's parents is required when the child has been taken into custody. This notice requirement is important, particularly in runaway cases. A full discussion of this notice requirement may be found in the Commentary to Standard 2.242.

As in delinquency cases, the law enforcement officer must prepare a written report clearly explaining the reasons for referral and custody. A copy of this written report should be given promptly to the intake unit. The report contemplated by this standard serves as a basis for further investigation by the law enforcement agency, by the intake unit, and by the family court section of the prosecutor's office. The report will also provide a means for monitoring referral and custody decisions in order to promote consistency and even-handed treatment. Such monitoring is particularly important in noncriminal misbehavior cases in which the determination whether to intervene is frequently a close and difficult decision. A complaint should be filed promptly following intervention, unless filed previously. It is anticipated that in many noncriminal misbehavior cases a complaint will already have been filed by a school official or family member before the youth is taken into custody.

Related Standards

2.12	Intervention for Noncriminal Misbehavior
2.21	Authority to Intervene (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.242	Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.248	Form of Complaint
2.251	Police-Juvenile Units
2.341	Procedures Following a Decision to Refer to Intake (Nonlaw Enforcement Agencies)
3.132	Right to Counsel—For the Juvenile
3.133	Right to Counsel—For the Parents
3.141	Organization of Intake Units
3.142	Review of Complaints
3.171	Rights of the Parents

2.244 Procedures Following Referral to Intake—Neglect and Abuse

Immediately upon referring to the intake unit individuals alleged to be subject to the jurisdiction of the family court over neglect and abuse or taking into emergency custody a juvenile alleged to have been neglected or abused, law enforcement officers should explain in language understandable to the accused individuals their right to remain silent, their rights to an attorney, the fact that any statements they make may be used against them, and their right to stop answering questions at any time.

A law enforcement officer taking into emergency custody a juvenile alleged to have been neglected or abused should bring the juvenile directly to the intake unit or to a facility authorized to provide care for such juveniles without delay, unless the juvenile is in need of emergency medical treatment. If a juvenile's parent, guardian, or primary caretaker may be unaware that the juvenile has been placed in protective custody, the officer should assure that such persons are notified of the fact that the juvenile has been taken into emergency custody, and of the reasons therefor, advise them of their rights, and recommend that they contact the intake unit immediately.

A report should be prepared explaining the reasons for intervention, referral, and if relevant, emergency custody, and a complaint filed if the complaining witness has not done so already. A copy of the report and the complaint should be promptly provided to the intake unit and the protective services agency.

Sources:

See generally U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act*, §9(c) and (e) (draft, 1976); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 5.3 and 5.6 [hereinafter cited as *Report of the Task Force*].

Commentary

This standard describes the responsibilities of law enforcement officers upon referring a juvenile's parent, guardian, or primary caretaker to the intake unit because of apparent neglect or abuse, or upon taking into custody a child who allegedly has been neglected or abused. *See* Standards 2.223 and 2.233.

It calls for law enforcement officers to administer the full and precise warnings called for in *Miranda v. Arizona*, 384 U.S. 436 (1966), to parents or others accused of neglect or abuse. Thus, after a referral to intake, persons charged with neglect and abuse should have explained, in language understandable to them, their right to remain silent, their rights to an attorney, the fact that any statements they make may be used against them, and their right to stop responding to questions at any time. This recommendation is wholly consistent with Standard 3.171, which applies after the court proceeding is underway, and which grants to individuals accused of neglect or abuse essentially the same procedural rights as a respondent in a delinquency proceeding. *See* Standard 3.171 and Commentary; *see also* Standard 3.113. Such persons are often threatened with the permanent loss of the companionship of their children, with stigmatization as "abusive" or "neglectful," and with the responsibility of a parallel criminal prosecution. Therefore, the notifying officer should at least tell such persons the truth—that anything they say may (and probably will) be used against them, and that they are entitled to all the additional rights identified in *Miranda*.

Other standards-setting groups have not gone as far as the National Advisory Committee's recommendation of full *Miranda*-type warnings in such cases. The IJA/ABA Joint Commission volume governing abuse and neglect does provide certain procedures applicable to parents or others charged in connection with abuse and neglect, e.g., Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse*, Standards 4.3(A) and 5.1(E); *see also* Standard 4.1(A) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]. However, under the approach taken by the Joint Commission such formal notifications do not occur until a petition is filed by the agency taking custody of the allegedly neglected or abused child. *Id.* Also, the IJA/ABA would not appear to require notice of the right to remain silent regarding allegations of abuse or neglect. *Id.* at Standard 5.1(D).

This standard procedure provides further that allegedly neglected or abused children taken into custody should be brought, without delay, directly to the intake unit or to a shelter care, foster home, or other facility specifically designated to provide care to neglected and abused children. *See* Stanards 3.154, 4.25, and 4.27; *cf.* Standards 2.242 and 2.243. There is no justification for taking a neglected or abused child to the police stationhouse, even for the briefest "interim" period. It would be senseless to remove a neglected child from the purported dangers of his/her home situation merely to subject that child to the proven dangers of a stationhouse or a jail. *See* Commentary to Standard 3.154; *see also Report of the Task Force, supra* at Standard 12.9 and Commentary. The only exception to taking the child directly to the intake unit would be in instances where the child is in need of emergency medical treatment. *See* Standard 2.245. Following intake, children subject to the court's neglect and abuse jurisdiction should not be placed in any type of facility housing accused or adjudicated delinquent or adult offenders. *See* Standard 3.154. Both the IJA/ABA, *Neglect, supra* at Standard 4.1(C), and the *Proposed Model Child Protection Act, supra* §§9(c) and (e), are in accord with these provisions, prohibiting any exposure of neglected or abused children to jails, stationhouses, or detention facilities. *See also Report of the Task Force, supra* at Standard 12.9.

Notice is required to parents who were not at home at the time of the child's removal, or in circumstances where the neglect or abuse occurs or is discovered outside the home—e.g., at school or some other institution. The standard specifies that the intervening officer should report to the parent the fact that the child is in custody, the reasons for custody, and the intake unit that is handling the matter. However, it does not require a police officer to disclose the exact location where the child is being held as part of the initial notice to the parent, since there are some cases, such as where there is unusual or severe abuse or neglect, or reason to believe the parent or primary caretaker may attempt forcibly to regain custody of the child, when it may be necessary initially to limit contact between the parent and child, until appropriate counseling may take place. *But cf.* Standards 2.242 and 2.243. The *Proposed Model Child Protection Act, supra* follows this limitation upon parental notice. The *Proposed Model Child Protection Act,* Commentary to Section 9(e). Particularly where parental visitation is thus curtailed, speedy review by the family court of the initial custody decision is imperative. *See* Standard 3.155. *Accord, Proposed Model Child Protection Act, supra.*

A report by the law enforcement officer explaining the reasons for intervention and for referral to the intake unit is also required. In addition, the officer should file a complaint if one has not been filed previously. A copy of the report and complaint should be promptly given to the intake unit and the protective services agency to provide the initial basis for further action. If the case is petitioned, the report and complaint should be made available during discovery to counsel for the individuals charged with neglect or abuse. *See* Standard 3.167.

Related Standards

2.13	Intervention to Protect Against Harm
2.21	Authority to Intervene (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.233	Criteria For Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.242	Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.243	Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.248	Form of Complaints
2.343	Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.133	Representation by Counsel—For the Parents
3.141	Organization of Intake Units
3.142	Review of Complaints
3.154	Criteria and Procedures For Imposition of Protective Measures in Neglect and Abuse Cases
4.25	Foster Homes
4.27	Shelter Care Facilities

2.245 Procedures When a Juvenile is in Need of Immediate Medical Care

If a law enforcement officer has probable cause to believe that a juvenile whom the officer has taken into custody is in immediate need of medical care, the officer should take the juvenile or arrange to have the juvenile taken to a medical facility which has been authorized to provide emergency examinations and treatment.

The officer should assure that prompt notice of the juvenile's condition and location is given to the juvenile's parents, guardian, or primary caretaker in addition to any information required under Standards 2.242-2.244.

If the emergency medical care can be provided on an out-patient basis and custody is not required, the juvenile should be released to his/her parent, guardian, or primary caretaker, or if such persons are not available, to another adult who is willing and able to provide supervision and care, and with whom the juvenile has substantial ties. If out-patient care is provided and custody is required, the juvenile should be taken directly to the intake unit, or, pursuant to Standard 2.244, to a facility designated to provide care to juveniles who have been neglected or abused.

A report should be prepared describing the facts and circumstances requiring emergency medical care and the reasons for the actions taken. A copy of the report should be provided to the juvenile's parent, guardian, or primary caretaker, and, if the juvenile is to be referred, a copy should also be promptly provided to the intake unit.

Source:

See generally Office of Youth Development, Department of Health, Education and Welfare, *Model Act for Family Courts,* §19(g) (1974).

Commentary

This standard sets out the procedures applicable when a law enforcement officer discovers a child who is malnourished, injured, or otherwise seriously ill, during the course of duty or during an investigation of delinquent conduct, noncriminal misbehavior, or neglect and abuse. For analogous provisions, *see* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 4.1 (tentative draft, 1976), and *Standards Relating to Noncriminal Misbehavior,* Standard 6.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect,* and IJA/ABA, *Noncriminal Misbehavior,* respectively]; and the *Model Act for Family Courts, supra. Cf.* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standard 4.5 A.1.b.; and *Standards Relating to Rights of Minors,* Standard 4.5 (tentative drafts, 1977) [hereinafter cited as IJA/ABA, *Interim Status,* and IJA/ABA, *Rights of Minors,* respectively]; and the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 12.9 and 12.10 (1976).

A number of safeguards are required whenever a law enforcement officer seeks to take a child in his/her custody directly to any medical facility. These provisions include: the officer must first have probable cause to believe that a medical emergency exists; the child's medical needs must be urgent and immediate; a court hearing should be held within at least 24 hours after the child is taken into custody; and a written notice and report explaining the actions taken must be promptly communicated to the parent or other primary caretaker. These important safeguards are more fully explained below.

A law enforcement officer who takes a child to a medical facility pursuant to this standard, must first have probable cause to believe that a medical emergency exists, i.e., the officer must be aware of facts and circumstances "sufficient to warrant a prudent . . . [person] in believing that . . ." the juvenile is in immediate need of medical care. *See, e.g., Beck v. Ohio,* 379 U.S. 89, 91 (1964); *see also* Standards 2.231, 2.232, and 3.157; *accord,* IJA/ABA, *Neglect, supra* at Standard 4.1. In contrast, the standard in the IJA/ABA volume on noncriminal misbehavior which deals with medical emergencies caused by mental or emotional disorders, requires only "reasonable cause" to believe there is "an immediate need for emergency medical care." IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 6.1. *The Model Act for Family Courts, supra* requires only a belief that the child is "suffering from a serious mental health condition, illness, or injury, which requires either prompt treatment or prompt diagnosis for evidentiary purposes . . ."

The requirement of probable cause rather than a mere "reasonable belief" of immediate medical necessity is intended to prevent any tendency to interpret this standard as a catchall provision justifying emergency custodial intervention even where the child's health is not seriously impaired or threatened and no independent basis for custody exists. Unlike Standard 6.1 in IJA/ABA, *Noncriminal Misbehavior, supra,* this standard does not give a law enforcement officer an independent basis to intervene or to take a child into custody. For example, under related standards, an officer may intervene and take a child into emergency protective custody based upon the officer's reasonable belief that the child's physical or emotional health is seriously impaired, and that no measure other than intervention can adequately protect the child. *See* Standards 2.13 and 2.233. If such independent criteria for intervention and custody were satisfied, this standard would authorize the officer to take the child directly to an appropriate medical facility, if, in addition, the officer had probable cause to believe the child needed immediate medical care. Removing children from their home or even taking a child into custody outside the home can often prove extremely traumatic for both the child and the parent. *See* Commentary to Standards 2.233 and 2.33. Even a brief stay by the child in a medical facility can compound this trauma, particularly where the facility is a mental hospital or a similar institution. Therefore, this standard requires that before taking a child to a medical facility, a law enforcement officer must have an independent basis to intervene (based upon Standards 2.11, 2.12, or 2.13); an independent basis to take the youth into custody (based upon Standard 2.231, 2.232, or 2.233); and, in addition, probable cause to believe that the youth is in immediate need of medical care (based upon this standard). In protective custody cases, it is anticipated that the facts which give an officer "probable cause" to take a child directly to a medical facility will frequently be identical to the facts which originally gave the officer a "reasonable belief" that the child must be taken into emergency protective custody in order to prevent serious impairment of the child's physical or emotional health. *See* Standards 2.13 and 2.233.

While the term "immediate need for medical care" compasses serious manifestations of mental disorder as well as physical illness, it is not intended to authorize emergency medical custody where a child merely "acts out" or is upset emotionally. Similarly, Standard 2.13(b) does not authorize initial intervention to protect a child against emotional harm unless the child's emotional or mental health is already seriously impaired.

Where evidence of a medical or emotional disorder, or of drug intoxication, is the basis for emergency medical custody under this standard, the law enforcement officer should have probable cause to believe that the juvenile is suicidal, or is seriously assaultive or seriously destructive toward others, or otherwise similarly shows an immediate need for medical care. IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 6.1. However, commission of specific acts (other than those which are prerequisites to initial intervention and custody under Standards 2.11-2.13 and 2.231-2.233, respectively) are not required before a juvenile whom the officer has taken into custody may be taken for emergency psychiatric medical care. *Accord,* IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 6.1 and Commentary. It may, for example, be sufficient that a youth convincingly threatens suicide or a serious assault, or arms him/herself with a deadly weapon. Even under such circumstances, the officer should never automatically refer the child to any psychiatric facility in the absence of probable cause to believe that an immediate medical need for treatment exists. The option of "predictive intervention" should be sparingly exercised. *Accord,* IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 6.1 and Commentary. Rarely, if ever, should an officer take a youth directly to a mental health facility where the assertedly suicidal, destructive, or assaultive behavior, or asserted threats of such behavior, were made outside the presence of a law enforcement officer, and where the youth, while in custody, does not exhibit an immediate need for psychiatric care.

Unlike the *Model Act for Family Courts, supra* at §19(g), this standard does not authorize an officer to take a child in custody directly to a medical facility for the mere purpose of obtaining a "diagnosis for evidentiary purposes" in the absence of an immediate need for medical care or treatment. These standards take the position that emergency custody for "evidentiary" or "diagnostic" purposes only, without probable cause for immediate medical treatment, is inappropriate at least in the absence of a court order. The IJA/ABA draft standards on noncriminal misbehavior are in general accord with this position, and require an "immediate need for emergency psychiatric or medical evaluation *and possible care*" before a child may be taken to a psychiatric or medical facility.

IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 6.1 (emphasis added).

The standard requires that an officer who takes a youth to a medical facility must assure that prompt notice of the juvenile's condition and location is given to the youth's parents, guardian, or primary caretaker, in addition to any information to which such persons are promptly entitled under Standards 2.242-2.244. *Accord,* IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 6.2. *See* IJA/ABA, *Rights of Minors, supra* at Standards 4.2 and 4.5 B. Where a child is in need of emergency medical care but his/her life is not immediately threatened, parental consent may be necessary before treatment, and the requirement for prompt notice will facilitiate timely parental consent. Also, a parent or custodian has a right to know about substantial dangers to the child, and such dangers would always exist whenever action is appropriate under this standard.

Each juvenile admitted to a medical facility after action by a law enforcement officer under this standard should be evaluated as soon as possible and should be offered appropriate medical care. The juvenile's informed consent should be obtained before any treatment is given, unless it is the professional opinion of the attending physician that the youth is incapable of rationally judging whether or not to accept treatment. When a youth's condition prevents him/her from giving consent, the informed consent of the youth's parent, guardian, or next of kin (if the youth is emancipated) should be sufficient. No consent should be required to treatment deemed necessary to save a child's life. *See* IJA/ABA, *Rights of Minors, supra* at Standard 4.5. Where appropriate consent cannot be obtained prior to emergency medical treatment, consent should be obtained for any further treatment. *See* IJA/ABA, *Rights of Minors, supra* at Standard 4.5(B).

The third paragraph of the standard explains what action is required when the attending physician determines either that the necessary medical care can be provided on an out-patient basis, or that no medical care is in fact necessary. In such instances, the law enforcement officer should release the juvenile into the care of a parent or other suitable caretaker with whom the child has substantial ties if custody is not required under the criteria set out in Standard 2.231, 2.232, or 2.233. This is in keeping with the principle throughout these standards limiting the occurrence and scope of intervention into the lives of juveniles. If out-patient care is appropriate but custody is required on some basis independent of the child's medical needs, the juvenile should be taken directly from the medical facility either to the intake unit or to a facility designated to provide care to neglected or abused children. *See* Standards 2.242-2.244.

The fourth paragraph of this standard requires that a full report be given to the parent explaining why emergency medical action was taken. It is anticipated that in many cases the taking of a juvenile into custody in order to secure emergency medical care will not require or result in referral to the intake unit. For example, in the "lost child" situation where a child is injured after being separated from parents, both emergency custody and emergency hospitalization are necessary although no court action is contemplated or required. *See also* Standards 2.242-2.244. Therefore this standard provides that a copy of the law enforcement officer's report should always go directly to the parent or caretaker, and that an additional copy should go to the intake unit only if the youth is in fact referred to intake. When a referral is made, the "notice" and the "report" required by this standard should be in combined form where possible for reasons of efficiency.

Related Standards

2.11	Intervention for Commission of a Delinquent Act
2.12	Intervention for Noncriminal Misbehavior
2.13	Intervention to Protect Against Harm
2.21	Authority to Intervene (Law Enforcement Agencies)
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.231	Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.241	Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.242	Procedures—Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.243	Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244	Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.248	Form of Complaint
2.344	Procedures When a Neglected or Abused Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.141	Organization of Intake Units
4.25	Foster Homes
4.27	Shelter Care Facilities

2.246 Procedures for Fingerprinting and Photographing Juveniles

Law enforcement agencies should promulgate regulations governing the collection, use, dissemination, and retention of fingerprints and photographs of juveniles.

A juvenile's fingerprints or photograph should only be taken when essential to establishing identity during the investigation of an act which would be a crime if committed by an adult. If the juvenile's fingerprints do not match those found during the investigation of the offense, the card containing the juvenile's fingerprints and other copies of the fingerprints should be destroyed immediately. If the comparison is positive and a petition is filed, the fingerprints should be delivered to the family court section of the prosecutor's office. If a petition is not filed or if the juvenile is not adjudicated delinquent, the fingerprint card and all other copies of the juvenile's fingerprints should be destroyed.

A photograph taken of a juvenile under the above-described circumstances should be maintained in essentially the same manner as a juvenile's fingerprints. Such a photograph should be destroyed if a petition is not filed or if the juvenile is not adjudicated delinquent.

Fingerprints and photographs which are not destroyed as set forth above, should be maintained in accordance with the principles and limits contained in Standards 1.51-1.53, and 1.54-1.56. Access to such materials should be limited to law enforcement officers when essential to conducting an ongoing investigation, to a member of the clerical or administrative staff of the maintaining court or agency for authorized internal administrative purposes, the juvenile, his/her counsel, and the juvenile's parents, guardian, or primary caretaker.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention* (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Records and Information Systems,* Standard 19.6 (tentative draft, 1977) [hereinafter cited as IJA/ABA *Information Systems*]; U.S. Department of Health, Education and Welfare, *Model Act for Family Courts and State-Local Children's Programs,* §§47, 48 (1974).

Commentary

This standard restricts the collection, use, dissemination and retention by the government of fingerprints and photographs of juveniles. It should be read in conjunction with standards pertaining to the collection, retention, maintenence, accessibility, and destruction of juvenile records.

Fingerprints and photographs are important tools of law enforcement which facilitate the identification of suspects in criminal and delinquency cases. Nonetheless, the use of fingerprints and photographs by law enforcement agencies is subject to abuse. For example, such "evidence" may be used deliberately or inadvertently to psychologically reinforce tentative eyewitness identification of suspects. Photographs may distort or conceal physical characteristics. Photographic identification procedures are often unnecessarily suggestive, and can lead to the tragic and often irreparable identification of the wrong person. Also, whenever law enforcement agencies keep a juvenile's photographs or fingerprints on file—e.g., in a "mug-shot" book—the youth's photos and prints may be repeatedly used, with little or no justification, for comparisons in later delinquency or criminal investigations. This practice not only exposes the youth to a high statistical risk of mistaken identification as a culprit, but may also label the youth as a likely suspect in the eyes both of investigating officers and of citizens. *See generally Manson v. Braithwaite,* 432 U.S. 98 (1977); *Simmons v. United States,* 390 U.S. 377 (1968); *see also United States v. Ash,* 413 U.S. 300 (1973); Wall, *Eyewitness Identification in Criminal Cases* (1968); Note, "The Psychology of Criminal Identification: The Gap from Wade to Kirby," 121 U. Pa. L. Rev. 1079 (1973); Buckout, "Eye Witness Testimony," 231 *Scientific American,* 23 (1974).

The National Advisory Committee recognized both the dangers and the utility of fingerprints and photographic identification procedures. It therefore recommends that such procedures should be permitted only in the limited circumstances, and only with the safeguards described in this standard and commentary.

The standard permits the taking of a juvenile's fingerprints or photograph only when such action is essential to establishing the juvenile's identity during an ongoing investigation where the act alleged would be a crime if committed by an adult. This "when essential" test is intended to ensure that there is a specific and compelling law enforcement purpose before a child may be fingerprinted or photographed. A similar test is employed in these standards to restrict access to juvenile records generally. *See* Standards 1.531-1.535.

Other standard-setting groups and sets of model legislation provide similar safeguards. The *Report of the Task Force, supra* allows fingerprinting or photographing only if the juvenile is already in custody for an alleged law violation, or if the family court judge has determined that there is probable cause to take fingerprints or photographs. The *Model Act for Family Courts, supra* limits the fingerprinting of children not already in custody to juveniles fourteen years or older, who were "referred to court for an alleged delinquent act" which would be a felony if committed by an adult. However, the *Model Act for Family Courts* allows fingerprinting, regardless of age, if during an investigation a police officer has reason to believe that the fingerprints found are those of a juvenile already in custody. Under the *Model Act for Family Courts,* the taking of the juvenile's photograph in delinquency cases would require a court order. *Id.* 47(d). The IJA/ABA, *Information Systems, supra* restricts fingerprinting to cases that would be felonies if committed by adults. However, the IJA/ABA Joint Commission permits a juvenile's photograph to be taken when "necessary for a pending investigation" regardless of whether the allegation would constitute a felony or a misdemeaner if committed by an adult. *Id.* at Standard 19.6 (D). The National Advisory Committee sees no reason to distinguish between photographs and fingerprints for these purposes. This standard accordingly applies the same rigid safeguards to both methods of identification. Under the standard, all fingerprint cards and copies should be destroyed when the fingerprints of the juvenile do not match those found during the investigation of the offense. All major standards-setting groups are in fundamental agreement with this provision. *See Report of the Task Force, supra;* IJA/ABA, *Information Systems;* and the *Model Act for Family Courts, supra.* When no petition is filed or where the juvenile is not ultimately adjudicated delinquent, all fingerprints (and all photographs) should be automatically destroyed. However, if the comparison of fingerprints is positive and a petition is filed, the prints should be delivered to the family court section of the prosecutor's office. The Task Force and the IJA/ABA Joint Commission both recommend turning over the prints to the family court if the case is petitioned. However, since it is the prosecutor who is required to introduce the fingerprints or photographs into evidence, and since the prosecutor is an officer of the court who should be subject to the same restrictions as the court, the family court section of the prosecutor's offices appear to be an appropriate interim custodian. At disposition the prosecutor would then be required to turn such records over to the court.

The third paragraph provides that photographs taken of juveniles shall be handled and maintained in basically the same manner as fingerprints. Such photographs must be destroyed if a petition is not filed or if the juvenile is not adjudicated delinquent. However, where one juvenile's photograph is taken in accord with these standards and is not identified from a photographic array, this standard would not prevent a prosecutor from maintaining that photograph as part of the entire array, for purposes of the trial (including any appeal) of another juvenile or adult whose photograph was identified from the photographic array; at the termination of the trial and appeal of the ideitified juvenile, any photographs in the array of nonadjudicated juveniles must be promptly destroyed.

If a juvenile is adjudicated delinquent, the standard calls for preservation of any photographs, fingerprint cards, and copies in the same manner as other identifiable records pertaining to juveniles. *See* Standards 1.51-1.56. However, consistent with analogous standards and model legislation, access to prints or photographs is far more limited than other types of records. *Cf.* Standards 1.531-1.533. The *Model Act for Family Courts, supra,* and IJA/ABA, *Information Systems, supra,* limit such access to "law enforcement officers or staff of the central state depository "for comparison purposes . . . only in the investigation of a crime." IJA/ABA, *Information Systems, supra* at Standard 19.6(c). The *Report of the Task Force, supra* would limit inspection of fingerprints and photographs to "law enforcement officers when necessary for the discharge of the official duties," and to others when "authorized by the court in individual cases upon a showing that it is necessary in the public interest." *Report of the Task Force, supra* at Standard 5.12. The restrictions imposed by this standard upon police access to photographic and fingerprint records are more stringent than those imposed by either the *Model Act for Family Courts* or the IJA/ABA Joint Commission, since it would authorize access to such materials by police officers only when such access is "*essential* to conducting an ongoing investigation." (emphasis added) The standard also makes provision for internal access to such materials by the court or agency maintaining them; however, such access is permitted solely to internal clerical or administrative purposes which have been specifically authorized by the maintaining court or agency. Additionally, the standard provides for access by the juvenile, and by the juvenile's attorney and parent, guardian, or prime caretaker. Such access to his/her own records affords the youth a means of challenging the accuracy and completeness of the information accompanying the prints or photographs. *See* Standards 1.54-1.55.

Finally, written guidelines should be developed to ensure clear, consistent, and sound policies governing juvenile fingerprinting and photographing procedures. *Cf.* Standards 2.21-2.23.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.535	Access for the Purpose of Conducting Research, Evaluative, or Statistical Studies
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records

2.247 Procedures Applicable to the Interrogation of Juveniles

Juveniles accused of committing a delinquent offense or engaging in noncriminal misbehavior should not be questioned regarding such offenses or such conduct, and formal oral or written statements by those juveniles should not be accepted, unless it has been explained in language understandable by the juvenile:

- **a. That the juvenile has a right to remain silent;**
- **b. That any statement which the juvenile makes may be used against him/her in a subsequent court proceeding;**
- **c. That the juvenile has a right to have an attorney present;**
- **d. That the juvenile has a right to have an attorney appointed when any of the circumstances listed in Standard 3.132 apply;**
- **e. That the juvenile has a right to have present his/her parent, guardian, or primary caretaker, or another adult who is within a reasonable distance and with whom the juvenile has substantial ties; and**
- **f. That the juvenile has a right to stop answering questions at any time.**

No statement made by any juvenile while in the custody of a law enforcement officer shall be admissible against the juvenile as part of the government's case-in-chief, unless such statement was made either in the presence of a parent or other adult described in paragraph (e) above or in the presence of the juvenile's attorney.

Before accepting a formal written or oral statement from a juvenile, law enforcement officers or other public officials working in their behalf should assure that the juvenile fully understands the matters explained and that the statement is voluntary, not only in the sense that it is not coerced or suggested, but also that it is not the product of adolescent fantasy, fright, or despair.

Sources:

See generally In re Gault, 387 U.S. 1, 55 (1967); *Miranda v. Arizona*, 384 U.S. 436 (1966).

Commentary

This standard sets forth three sets of requirements considered necessary to guarantee the voluntariness and trustworthiness of statements derived from juvenile interrogation. First, it requires that *Miranda*-type warnings—modified slightly to take into account the special circumstances of youths in custody—be given to juveniles. Second, it would establish a *per se* rule that no statement made by a juvenile in custody shall be admissible against him/her as substantive evidence in any juvenile or criminal case, unless the statement was made either in the presence of a parent, *or* other "friendly adult," *or* the youth's attorney. *see* paragraph (e) of this standard. Third, it requires that the police assure that the tatality of the circumstances during interrogation are supportive of the juvenile, so that any statements will be products of the juvenile's free will, rather than of adolescent fantasies, fright, or despair. *See In re Gault.*

The National Advisory Committee strongly recommends that *Miranda* warnings be administered to juveniles in custody. The *Miranda* warnings were established as minimum procedures to be followed and as prerequisites to the introduction of statements obtained during custodial interrogation as substantive evidence against the accused. *Miranda* mandated that an accused must be warned that:

(1) He/she has a right to remain silent.
(2) Any statement given may be used against him/her.
(3) He/she has a right to be represented by counsel and to have counsel present during questioning.
(4) If he/she cannot afford counsel one will be appointed to represent him/her.
(5) If at any time prior to or during questioning he/she indicates a desire to remain silent, all questioning must stop. *Id.* at 444, 467-74.

The Supreme Court has not yet explicitly ruled that *Miranda* applies with full force to juveniles. However, numerous lower courts, for the most part relying on *In re Gault, supra,* have found that full *Miranda* warnings must be given to juveniles in custody during the investigatory stage of any proceeding. *See, e.g., In re Myers,* 25 N.C. App. 555, 214 S.E. 2d 268 (1975); *In re Gennis M,* 70 Cal. 2d 444, 450 P.2d. 296, 75 Cal. Reptr. 1 (1969); *In re Teters,* 264 Cal. App. 2d. 816, 70 Cal. Rptr. 749 (1968); *In re Creek,* 243 A. 2d. 49 (D.C. Ct. App. 1968); *Leach v. State,* 428 S.W.2d. 817 [Tex. Civ. App. (1968)]. Moreover, in response to *In re Gault* and *Miranda*, several states have implemented legislation requiring that *Miranda*-type warnings must be given to juveniles. *See, e.g.,* Colo. Rev. St. Ann. §19-2-102 (3)(c)(i) (1974); Pa. Stat. Ann., Lit. 42, §6338(b) (Purdon Supp. 1978); Ga. Code Ann. §24A-2002(b) (Supp. 1973); N.D. Cent. Code §27-20-27(2) (1974); Tenn. Code Ann. §37-227 (Supp. 1973); *see also*

S. Davis, *Rights of Juveniles: The Juvenile Justice System* (1974). Recently the Supreme Court "assume(d) without deciding" that the *Miranda* principles were fully applicable to a juvenile proceeding. *Fare v. Michael C.*, 99 S.Ct. 2560 (1979).

All required warnings must be given in language understandable to the juvenile. "The recipient's age and educational level must be considered when notice is given . . ." Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pretrial Proceedings*, Commentary to Standard 2.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Pretrial Proceedings*]. A certain amount of discretion is left to the police in this matter. However, neither language barriers nor technical legal or police jargon should deprive the juvenile of the ability to understand and effectively utilize the notice given. Related standards provide that parents, guardians, or prime caretakers should also be advised of the rights to which their child or ward is entitled. *See, e.g.*, Standards 2.242 and 2.243.

The second set of safeguards seeks to ensure that before questioning, each juvenile receives the advice and assistance of some "friendly adult." The standard recommends that the juvenile be advised, in addition to the *Miranda* statements which apply strictly to adults, that he/she has a right to have present his/her parent, guardian, or primary caretaker, or another adult who is within a reasonable distance and with whom the juvenile enjoys substantial ties. It would also establish a *per se* requirement that no statement made by a juvenile in custody shall be admissable against that juvenile as substantive evidence in any juvenile or criminal case, unless the statement was made in the presence of a parent *or* other "friendly adult," *or* the youth's attorney. Both of these recommendations find support in the language of pertinent opinions of the Supreme Court. *See, e.g.*, *Haley v. Ohio*, 332 U.S. 596 (1948); *Galligos v. Colorado*, 370 U.S. 49, 54 (1962); *cf. In re Michael C., supra.* In *Haley, supra* a fifteen year old youth had been held *incommunicado* during a lengthy period of questioning. Writing for the majority, Justice Douglas noted that:

> No friend stood at the side of this fifteen year old boy as the police, working in relays, questioned him hour after hour, from midnight until dawn. No lawyer stood guard to make sure the police went so far and no further, to see to it that they stopped short of the point where he became the victim of coercion. No counsel or friend was called during the critical hours of questioning.

The concept that a juvenile needs "counsel or friend" during questioning was reiterated in *Galligos*, 370 U.S. at 54, which held inadmissible, on due process grounds, the confession of a fourteen-year-old suspect. The Court noted that a juvenile could not presently be "compared with an adult in the full possession of his senses and knowledgeable of the consequences of his admissions," and held that young Galligos had needed:

> The aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. *Id.* at 54.

The Supreme Court recently decided, in a limited holding, that a juvenile's request to see his probation officer is not *per se* an invocation of the juvenile's Fifth Amendment rights as pronounced in *Miranda*. *Fare v. Michael C.*, 99 S.Ct. 2560 (1979). However, the Court also stated:

> "Where the age and experience of a juvenile indicate that his request for his probation officer or his parents is, in fact, an invocation of his right to remain silent, the totality approach will allow the court the necessary flexibility to take this into account in making a waiver determination." *Id.*

Concerns similar to those expressed by the Supreme Court in *Haley* and *Galligos* have also lead other standards-setting groups to place the highest premium upon assuring that juveniles are not interrogated without the presence, assistance, and advice of counsel and/or some friendly adult. The Task Force and the IJA/ABA Joint Commission, for example, both urge that a youth should not be permitted to waive the right against self-incrimination without the advice of counsel, and that the right to presence of counsel itself should be nonwaivable. *See, e.g.*, National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 5.8 and 5.12 (1976) [hereinafter cited as *Report of the Task Force*]; and IJA/ABA, *Pretrial Proceedings, supra* at Standard 5.1. Also a growing number of states now require by statute the presence of a parent during questioning, or the presence either of a parent (or "friendly adult") or of counsel, before a juvenile's statement may be admitted against that juvenile during the government's case-in-chief. *See, e.g.*, Colo. Rev. Stat. Ann. §19-2-102(3)(c)(I) (1974); Conn. Gen. Stat. Ann. §17-66d (1975); and N.M. Stat. Ann. §13-14-25(A) (Supp. 1973).

Because of the extreme vulnerability of the juvenile in police custody, the National Advisory Committee considers it imperative to assure that either the youth's counsel, or a parent or other adult friend, is present by the juvenile's side before and during any questioning. Preferably, the juvenile in custody should have the advice and assistance of *both* his/her attorney and a parental figure. This standard accordingly provides that the youth in custody must be advised of the right to have present prior to any questioning, not only an attorney but also a parent or other adult friend who may be near by. It further specifies that any statement taken by the police from the juvenile when *neither* an attorney *nor* a parent figure is present shall not be admissible against the juvenile during the government's case-in-chief. The National Advisory Committee considered and discarded the position of the *Report of the Task Force, supra* and the IJA/ABA, *Pretrial Proceedings, supra,* that a juvenile can validly waive the right against self-incrimination without the presence of the legal counsel. While the National Advisory Committee does not assume that a parent or other lay adult can fully take the place of a lawyer, (indeed, this assumption was rejected by the Supreme Court in *Fare v. Michael C., supra)* it concluded that if professional legal counsel were unavailable, a juvenile should at least have access to the mature judgment and advice of an interested adult. Although on occasion parents can themselves act coercively toward their child who is in police custody, on balance, the presence of a friendly adult will be supportive and protective of the juvenile. Moreover, this standard provides the additional safeguard of a modified "voluntariness" standard which emphasizes the police officer's responsibility to ensure that interrogations of youths take place in an atmosphere free even from subtle forms of coercion. Taken together, the various safeguards provided in this standard should adequately protect juveniles in custody whom the police seek to interrogate.

The third set of safeguards provides that the government should bear the burden of demonstrating by clear and convincing evidence that any statement introduced against any juvenile (whether in the government's case-in-chief or in rebuttal) must be "voluntary" not only in the sense that it was "not coerced or suggested, but also that it is not the product of adolescent fantasy, fright, or despair." The quoted language is from *In re Gault* and is included *verbatim* in the text of the standard. If a juvenile's statement is not demonstrated to be "voluntary" in this sense, the statement may not be introduced by the government against the juvenile at any stage of any adjudicatory proceeding.

In adult criminal cases, the government must demonstrate that a defendant's statement which it seeks to introduce must be "voluntary" only in the sense that the statement is not the product of active police suggestion, coercion, duress, physical abuse, etc. The National Advisory Committee believes that such a "voluntariness" standard is inadequate to protect juveniles, who are intrinsically more susceptible to police influence than are adults. Young people are inherently vulnerable to influence by the interrogation setting (whether it be a squad car or a stationhouse), by the display of police badges, uniforms, and weapons, and by the fact that police—both as public officials and as adults—constitute authority figures.

For these reasons, the administration of *Miranda* rights and the presence of a parent or counsel—although important rights—cannot be expected to eliminate fully the subtle coerciveness which is inherent in most police interrogations of a juvenile. A juvenile in custody is less likely than an adult to regard the *Miranda* advisements as concrete rights which he/she has a genuine option to assert—as opposed to a rote litany of legalisms which the officers expect the youth immediately to waive. *See* A. B. Ferguson and A. D. Douglas, "A Study of Juvenile Waiver," 7 San Diego L. Rev. 39, 53-54 (1970). Court-appointed attorneys may be insufficiently familiar with the youth at the interrogation stage—or insufficiently vigorous in their representation—to prevent fantasy, fright, or despair from influencing their clients. And in some cases, parents—or even attorneys, with misconceived notions about their ethical obligations to juvenile clients—may themselves add to the syndrome of coercive factors which can overbear the will of a young person in police custody. *See* McMillian and McMercury, "The Role of Defense Counsel in the Juvenile Court—Advocate or Social Worker?" 14 *St. Louis U.L.J.* 561 (1970); *cf. In re Michael C., supra.*

The "voluntariness" standard should be modified for juveniles to take their special susceptibilities into account, and to impress upon police officers their full responsibility for the atmosphere within which interrogations of juveniles are conducted.

This duty would include an obligation to reduce or eliminate coercive factors which do not originate in police conduct, where such external factors threaten to instill fear or despair or otherwise to overbear the youth's will. For example, in some instances, this standard might require an officer to intercede, where the officer perceives that parents' threats might coerce a statement from their child which would be "involuntary" as defined in this standard. (In such a case, the officers' intercession might take the form of merely a re-administration of the youth's *Miranda* rights to both parents and child, or removing the youth briefly from the source of the coercion (i.e., the parents), or whatever other steps reasonably appear necessary to re-establish an atmosphere free from coercion.)

When implemented, the provisions of this standard will substantially assist to assure the trustworthiness of statements admitted as evidence against juveniles in family court, as well as to assure fair and humane procedures for police interrogation of juveniles.

Related Standards

2.21	Authority to Intervene (Law Enforcement Agencies)
2.242	Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.243	Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.251	Police Juvenile Units
2.343	Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
3.111	Jurisdiction Over Delinquency
3.112	Jurisdiction Over Noncriminal Misbehavior
3.132	Representation by Counsel—For the Juvenile
3.146	Intake Investigation
3.171	Rights of the Parties

2.248 Form of Complaint

A complaint is a written statement of the essential facts constituting a delinquent offense, noncriminal misbehavior, neglect, or abuse, signed under oath by a person who of his/her own knowledge, or on the basis of information supplied by others, has probable cause to believe that the facts stated in the complaint are true.

Source:

See generally Federal Rules of Criminal Procedure, 3.

Commentary

The filing of a complaint initiates the legal proceedings against a person alleged to have committed a delinquent act, to have engaged in noncriminal misbehavior, or to have neglected or abused a child. It provides authorization for the intake unit to carry out the activities described in Standards 3.141-3.147. Normally, a complaint will be filed before a warrant or summons is issued.

The complaint contemplated by this standard is similar to that required in federal criminal cases. Fed. R. Crim. P. 3. Specifically, the complaint should contain the facts necessary to establish jurisdiction of the family court, the name, and address (if known) of the individual alleged to have engaged in that conduct; the date on, and place and time at which the alleged conduct occurred; and the approximate age of the juvenile allegedly involved. Although these matters need not be phrased in formal legal language, they should be stated as clearly and precisely as possible.

Although most juvenile court acts permit the complaint to be given orally, Institute of Judicial Administration/American Bar Association Joint Commission, *Standards Relating to Pretrial Proceedings,* Commentary to Standard 1.1 (tentative draft, 1977), this standard rejects that approach. Since the complaint will provide the basis for intake screening procedures, prosecutorial discretion in charging, and preliminary judicial action, a written document is preferable to an oral report.

The standard also requires that the complaint be signed under oath by the victim or other person with direct personal knowledge of the events described, or by a police officer or authorized protective services worker on the basis of the facts and statements obtained during an investigation. No juvenile court act requires that the complaint be made under oath and few require the complaint to be based on personal knowledge. *Id.* However, it was concluded that complaints will be more trustworthy and less subject to abuse if a complainant is required to sign under oath. Similarly, the requirement that the information be sufficient to establish probable cause, at least in the mind of the complainant, will reduce the likelihood that an unfounded complaint will be filed.

The complaint is used solely to initiate the initial screening procedures and not as a substitute for the petition required by Standard 3.164. The petition is to be used to formally initiate judicial action after appropriate screening by intake officials and prosecuting attorneys.

Related Standards

2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.242	Procedures Upon Referral to Intake—Delinquency (Law Enforcement Agencies)
2.243	Procedures Upon Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244	Procedures Following Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.342	Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
3.142	Review of Complaints
3.147	Notice of (Intake) Decision
3.163	Decision to File a Petition
3.164	Petition and Summons

2.25 Specialization of Law Enforcement Officers

2.251 Police-Juvenile Units

Law enforcement agencies with more than fifty sworn officers should establish a specialized unit to assist in handling matters involving juveniles. The person in charge of the juvenile unit should be responsible for:

- **a. Assisting in the development and implementation of policies and regulations governing law enforcement practices and decisions relating to juveniles;**
- **b. Serving as the liaison to other components of the juvenile justice system as well as agencies, groups, and organizations involved in delinquency prevention; and**
- **c. Taking charge of cases which go beyond initial and informal handling.**

The person in charge of the juvenile unit should be of sufficient rank to assure that the unit has a status equal to that of other specialized units of the law enforcement agency.

In law enforcement agencies with less than fifty sworn officers, at least one officer should be assigned the responsibility for performing the duties outlined above.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems,* Standard 4.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Police Handling*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 7.1 (1976) [hereinafter cited as *Report of the Task Force*]; R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 155-156 (International Association of Chiefs of Police, 1973)

Commentary

This standard recommends the creation of specialized police-juvenile units for those law enforcement agencies with more than fifty officers. In units of less than fifty officers, the standard recommends that at least one officer be assigned the identified responsibilities.

The incidence of crime among juveniles has risen dramatically over the past few years. While the increase has been attributed to various causes, and while the proposed cures have failed to significantly diminish the rate of juvenile criminality, it has become clear that every agency that comes into contact with youthful law violators must be equipped to deal with their specific problems.

Along with the increase in law violations by children, society has witnessed an increase in the number of children who have been neglected and who are running away from home, who are unable to get along in school or at home, and/or who have been neglected and mistreated by their parents. Again the causes are multifold. Nevertheless it remains clear that every agency concerned with this phenomenon must be prepared to handle complaints in an appropriate fashion.

Delinquency cases—and in many instances of noncriminal misbehavior, neglect, and abuse—the first public agency to become involved is usually the police department. In the past, resources of police departments were not particularly adapted to working with the special problems of juveniles and their families. *See* IJA/ABA, *Police Handling, supra* at Standard 4.1 and Commentary; *Report of the Task Force, supra* at Standard 7.5 and Commentary.

While police departments cannot and should not be expected to be the primary service agency for juveniles and their families, it has become apparent that in order to fulfill their mandate to protect the public and assist in the prevention of crime, police departments must allocate resources in a manner which recognizes the increased number of juveniles involved in criminal activities, the correlation between the mistreatment of children and future criminal conduct, and the special police problems attendant in dealing with children and families.

Different theories have emerged regarding the optimal means by which a police department should manage and administer its services when dealing with families and children. This standard recommends the establishment of specialized units within the department to deal with juvenile matters in addition to the training of all line officers in techniques to handle those cases. *See* Standard 1.421. This concept has also been recognized by the IJA/ABA, the National Advisory Committee on Criminal Justice Standards and Goals, and the International Association of Police Chiefs as an optimal method of organization to "develop and pursue streamlined procedures with the juvenile court and receiving or detention facilities." Kobetz and Bosarge, *supra* at 154. *See* American Bar Association, *Standards Relating to the Urban Police Function* (approved draft, 1972); National Advisory Committee on Criminal Justice Standards and Goals, *The Police* (1973).

There are many ways in which juvenile specialists become an asset to the overall police operation. They become knowledgeable in the problems of children and families, cultivate useful contacts to serve as sources of intelligence or resources for promoting rehabilitation, and become adept at responding to the complexities of juvenile crime and assist in the training of other officers about the special procedures required by law for handling youth. Kobetz and Bosarge, *supra* at 154. Finally, juvenile specialists can foster community cooperation through successful law enforcement against juvenile crime. 15 *Police* 20, 21 (Nov.-Dec. 1970); *see also Report of the Task Force, supra* at Commentary to Standard 7.4.

The recognition of the need for specialization in police work is not new. In 1850, the City Council of Boston assigned one officer sole responsibility for dealing with young people. Similarly, in establishing the first juvenile court in 1899, the Illinois Legislature encouraged the creation of a special squad of juvenile officers in the Chicago Police Department. IJA/ABA, *Police Handling, supra* at Commentary to Standard 4.2. This standard takes the traditional concept and adapts it to modern-day conditions.

The standard divides the functions of the specialized unit into three parts: policy development, coordination, and implementation; liaison with other juvenile justice components; and responsibility for cases which go beyond initial and informal handling.

Paragraph (a) recommends that the person in charge of the juvenile unit be responsible for the development and implementation of policies and regulations governing law enforcement practices and decisions as they relate to juveniles. The National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, *Comparative Analysis of Standards and State Practices and Police-Juvenile Operations*, 21-25 (1975) suggests that police policy should concentrate on maintaining a flexible response readiness toward existing and emerging service and control needs in the community and on assuring that a maximum of possible alternative remedial resources exists to which problem cases can be referred for further work. *See also* IJA/ABA, *Police Handling, supra* at Commentary to Standard 4.4. Emphasizing that policy should rely on "the least coercive measures of control while maintaining full regard for considerations of legality, equity, and practical effectiveness," the Task Force suggested that the juvenile officer formulate procedures regarding the role of the uniformed patrol officer, the transfer of cases from the uniformed patrol to the juvenile unit, the transfer of cases from the police to other agencies, and the limits necessary for counseling and advice provided by juvenile officers. *Comparative Analysis, supra*. Finally, the authors suggested that the supervising officer formulate policy in close coordination with the community relations unit or the officer of the department. *Id.*

The development and implementation of policies and regulations are essential if the specialized unit is to act fairly and appropriately to all juveniles with whom its members come into contact. Because the policy is to be formulated in a manner that is consistent with overall police department procedures, the person in charge of the unit is required to assist in the process rather than be the sole determiner of the policies and regulations. This position is consistent with the recognition of the specialized unit as a part of the entire police operation rather than an entity unto itself. It is also consistent with recommendations by other groups. *See, e.g.*, IJA/ABA, *Police Handling, supra* at Commentary to Standard 4.4.

Paragraph 2.251(b) recommends that the officer in charge of the juvenile unit serve as liaison to other components of the juvenile justice system including government agencies, community groups, and private organizations involved in delinquency prevention. Because the police, like other organizations impacting upon children and families, cannot develop policies without an understanding of the obstacles facing all other agencies operating in the juvenile justice system, an open flow of information is essential. The head of the juvenile unit will be most familiar with the concerns of the police both in the specialized unit as well as in other units which involve the handling of children. Because of his/her expertise, the head of the unit will be able to draw on the experiences of other participants in the system to further refine police policies and regulations. Conversely, others in the system will see him/her as a person knowledgeable in the special problems of youth and not as just another police officer with general institutional concerns. As a result, the working of the entire system will be improved.

Paragraph 2.251(c) recommends that juvenile officers take charge of cases which go beyond initial contact and informal handling. While initial contact with the juvenile is usually made by a patrol officer, the standard recommends that specialized juvenile officers be assigned to cases in which the juvenile is referred to intake in accord with Standards 2.221, 2.222, and 2.223 or those in which a juvenile is taken into custody pursuant to Standards 2.231, 2.232, and 2.233. Such cases necessitate the use of a specially trained juvenile officer for follow-up investigation. Additionally, in serious cases where primary responsibility for the case falls on other segments of the department, juvenile officers should participate in investigations and prosecutions. Finally, in those cases which have gone beyond initial contact with the other officers but do not require referral to intake, juvenile officers might aid in the disposition of the case by offering counseling, guidance, and advice.

The standard recommends that the person in charge of the juvenile unit be of sufficient rank to assure that the entire juvenile unit has a status equal to other specialized units in the police department. The *Report of the Task Force* reported that "all too often [the juvenile] function is looked upon with derision in tradition-bound police departments and is considered to be a 'social work' job unrelated to 'real' police work." *Report of the Task Force, supra* at Commentary to Standard 7.6. Further, it noted that the assignment was considered "a dead end job for those not deemed capable of succeeding in the detective division or command structure." *Id.* To perform its function successfully, the unit must be recognized as an integral and important part of the department. To assure that this occurs, the head of the unit must bear a rank equal to leaders in other specialized units.

The size and organization of the specialized juvenile unit must, of necessity, vary with the size of the entire police department. Officers assigned to the juvenile unit should, however, be available at each stationhouse on a 24-hour, seven-day-per-week basis. *Report of the Task Force, supra* at Commentary to Standard 7.1. In small departments, officers should be available at a minimum during those periods in which it has been determined that the greatest number of police-juvenile contacts occur. *See* Kobetz and Bosarge, *supra* at 155; *Report of the Task Force, supra* at Commentary to Standard 7.1.

Finally, no matter how small the department is, at least one officer should be charged with the duties delineated in the standard. While the amount of contact between families and children and the police will generally be less in nonurban areas where police forces are generally smaller, contacts will nonetheless occur. To accomplish the goals set forth in the standards generally, at least one officer in every police department must be equipped to handle these problems.

Related Standards

1.41 Personnel Selection
1.421 Training of Law Enforcement Personnel
2.221 Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222 Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.223 Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.231 Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
2.232 Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.233 Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.241 Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.242 Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.243 Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244 Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245 Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.246 Procedures for Fingerprinting and Photographing Juveniles (Law Enforcement Agencies)
2.247 Procedures Applicable to the Interrogation of Juveniles (Law Enforcement Agencies)
2.252 Specialization Within Patrol Units
2.253 Personnel Policies

Prevention Strategies

Focal Point Social Institutions:
Cor. J-1 Police-Youth Relations
Focal Point Social Interaction:
Cor. J-1 Alternative Approaches to Juvenile Misconduct

2.252 Specialization Within Patrol Units

Every patrol unit should contain at least one officer to whom problems involving juveniles are assigned. Such officers should remain under the administrative control of the patrol unit, but should, whenever possible, serve as a formal link between the patrol unit and the juvenile unit and receive the specialized training described in Standards 2.253 and 1.421.

Source:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems,* Standard 4.3(b) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Police Handling*].

Commentary

This standard recommends that at least one officer in each field patrol unit be assigned, in addition to general patrol duties, special responsibility for handling field situations involving juveniles. Patrol officers have traditionally borne the responsibility for the initial police encounter with a wide range of problems. Their duties require that they be knowledgeable of the entire spectrum of law enforcement functions and that they be able to determine whether the resolution of the problems they encounter requires transfer of the case to another unit with more sophisticated capability, or adjustment through their own efforts. *See generally* IJA/ABA, *Police Handling, supra* at Commentary to Standard 3.4.

Recently police organizations have been experimenting with the concepts of team policing and generalist/specialist officers in order to eliminate grade distinctions between assignments and to make better use of individual officer talents to enhance police work within the community. In recognition of the apparent success of these programs, the standard recommends the use of a generalist/specialist trained in family dynamics and youth problems in all police patrols. While all police officers should possess some familiarity with juvenile problems and police procedures for handling juveniles, *see* Standard 1.421, the generalist/specialist will receive additional training in this area. *See* Standard 2.253. He/she will then be assigned special responsibility for field contacts with juveniles and their families.

When a problem is referred to the juvenile specialist of the patrol unit, the problem will remain one of team competence rather than one solely for the specialist. Thus the distinction in status between the numerous patrol officers and the few specialized juvenile officers will be avoided. However, the specialized knowledge of the juvenile generalist/specialist will permit the unit to make more appropriate judgments regarding children within the confines of sound police action to protect the community and prevent crime.

Other advantages of the generalist/specialist model include the presentation of the identity of the officer charged with family crisis responsibilities as a "real cop" in the eyes of his/her colleagues and of the public; efficient delivery of a needed service in a large organization without sacrificing general uniformed patrol coverage; implications for other generalist/specialist roles in which each officer has a specialized area of expertise, thereby avoiding the need for each officer to be all things to all people; respect for the patrol officer's special expertise by colleagues and by the public; and the advantageous use of natural or latent talents of patrolmen. *See generally* M. Bard, *Family Crisis Intervention: From Concept to Implementation* (1973) regarding the advantages of the "generalist/specialist" model.

While remaining under the administrative control of the patrol unit as a team member, the juvenile specialist will also serve as a link between the patrol and the specialized juvenile units. *See* Standard 2.251. For example, as a patrol officer, the juvenile generalist/specialist will attempt to handle juvenile problems which occur on patrol through channels of influence as they exist within the cultural context of the community. If, however, such problems involve serious crimes or allegations of neglect or abuse or require extensive police work, the generalist/specialist is expected to transfer them to officers in the specialized juvenile unit.

In smaller departments which do not have sufficient personnel to provide a youth specialist for each patrol shift, all field officers should be provided with some specialized training to ensure the availability of such services when the need arises. *See* Standard 1.421; *Bard, supra.*

Related Standards

1.41	Personnel Selection
1.421	Training of Law Enforcement Personnel
2.251	Police Juvenile Units
2.253	Personnel Policies

Prevention Strategies

Focal Point Social Institutions:
Cor. J-1 Police-Youth Relations

2.253 Personnel Policies

Officers serving in specialized juvenile units or as juvenile specialists within patrol units should, at a minimum, be experienced line officers. They should be selected on the basis of demonstrated aptitude and expressed interest, and should receive both initial and inservice training to obtain necessary knowledge and skills.

Officers should be able to pursue careers as juvenile specialists with the same opportunities for promotion and advancement as other officers, and should receive compensation commensurate with the duties and responsibilities of the job performed.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems,* Standard 4.5(b) (tentative draft, 1977), [hereinafter cited as IJA/ABA, *Police Handling*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Justice and Delinquency Prevention,* Standard 7.6 (1976) [hereinafter cited as *Report of the Task force*]; *see also* R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 158-161 (International Association of Chiefs of Police, 1973).

Commentary

This standard recommends basic qualifications for the selection of juvenile officers in a specialized juvenile unit or as juvenile generalist/specialists within a patrol unit. Specifically, the standard recommends that juvenile specialists be experienced line officers selected on the basis of demonstrated aptitude and expressed interest. Furthermore, the standard recommends initial and inservice training for such personnel and urges that career juvenile specialists be given opportunities for promotion and advancement commensurate with those of other officers, with corresponding pay increases.

Basing selection on merit will assist to upgrade the quality and status of police-juvenile operations. As explained by the Task Force, and noted in the Commentary to Standard 2.251, the police-juvenile function has been traditionally looked upon with derision in many police departments. For many years the juvenile section has been an automatic assignment for women officers and for those not deemed capable of succeeding in other divisions. *See Report of the Task Force, supra* at Commentary to Standard 7.6. Thus, employing both past performance as a police officer and aptitude for and an interest in the work as selection criteria is required to insure that top quality personnel are assigned to the positions. IJA/ABA, *Police Handling, supra* at Commentary to Standard 4.5.

The Task Force elaborated upon the general terms of the standard by listing basic and secondary criteria necessary for the selection of a police juvenile officer. Among the list of basic criteria, the Task Force included general patrol experience, above-average intelligence, a desire to work with young people, and a basic understanding of human behavior. To compliment the list of basic criteria, the Task Force recommended secondary criteria which included a formal education evidenced by a bachelor's degree in law enforcement, criminal justice, or the social and behavior sciences; an ability to communicate with a broad range of people and to write effectively; and the possession of basic investigative skills including an ability to interrogate, to interview, and to present information in a courtroom. *See Report of the Task Force, supra* at Commentary to Standard 7.6. Although the presence of a bachelor's degree may be a useful index of potential, this standard recognizes that small departments may not be able to fulfill this goal. Nonetheless, whenever possible, a bachelor's degree should be required. Similar criteria for assignments have also been advanced by the IJA/ABA, *Police Handling, supra* at Standard 4.5. *See generally Report of the Task Force, supra* at Standard 7.6 regarding the process of officer selection.

To further upgrade the quality and status of the police juvenile unit, the standard recommends that provision be made for professional advancement and that salary increases should be awarded upon performance of certain duties and responsibilities. Furthermore, the standard advises that opportunities for promotion and advancement should be commensurate with those of other officers. Clearly one of the greatest impediments to the development of a highly effective juvenile unit has been its low status in the department. If the effectiveness is to be enhanced, a total commitment to upgrading the position by the police department is necessary. The standard recognizes that the importance of a position is often acknowledged only if it provides salaries commensurate with others of equal responsibility and rank, and advancement opportunities equal to other positions seen as important. Without the commitment of resources and the recognition of talents, it is unlikely that specialized juvenile police positions can ever be filled with top quality people or that increased effectiveness can be achieved.

Finally, the standard recommends specialized training of police juvenile officers to ensure the high quality of the police juvenile unit. This training is in addition to the training recommended for all police officers. *See* Standard 1.421. The

Task Force recommends at least eighty hours of either preservice or contemporaneous training before or within one year of assignment. *Report of the Task Force, supra* at Standard 7.7. The International Association of Chiefs of Police (IACP) recommends pre-assignment training in such matters as the "philosophy of police work with children, review of juvenile laws, interdepartmental relations, interviewing techniques, dispositional alternatives, community resources, juvenile records, developing external department relations, and delinquency prevention." Kobetz and Bosarge, *supra* at 158. While Kobetz and Bosarge, *supra* recommends that state law enforcement training commissions develop statewide standards for preservice training of specialized police juvenile officers, they also urge the directors of the state law enforcement training commissions to establish, with the assistance of individuals from within the juvenile justice system, national training standards to ensure national compliance with a minimal training requirement. Kobetz and Bosarge, *supra* at 159.

The training of juvenile officers should continue beyond preservice training by periodic inservice training programs. The IJA/ABA, *Police Handling, supra* recommends that during their probationary period as specialized juvenile officers, officers should receive full-time inservice training for at least two weeks with the juvenile court, the schools, or with some juvenile social service agency. IJA/ABA, *Police Handling, supra* at Standard 4.5(b). In this way, the officers will be exposed to the procedures and problems of institutions with which they will have to work. When the officers function in a full-time, independent capacity as juvenile specialists, the Task Force recommends continued inservice training by attendance at one forty-hour training per year. *Report of the Task Force, supra* at Standard 7.7. Attendance can also be satisfied by participation in a local department program or in a regional, state, or national workshop. Officers attending such programs should receive full salary and be considered on duty. Through these programs, practitioners can become acquainted with new court rulings, juvenile procedures and community programs as well as having the opportunity to exchange information in problem areas. *See* IJA/ABA, *Police Handling, supra* at Commentary to Standard 4.5(b).

Inservice training programs can also be developed with an intercity juvenile officer exchange program to enable officers to observe procedures employed by other jurisdictions. *See Report of the Task Force, supra* at Commentary to Standard 7.7. Such exchanges will broaden the perspectives of officers and lead to more efficient implementation of juvenile services. Intercity training fosters the establishment of better working relationships throughout the entire system and may serve to encourage pre-adjudication disposition and referral to social service agencies as officers become acquainted with more community diversion programs. *Report of the Task Force, supra* at Commentary to Standard 7.7. Rather than using the exchange as a means to reward service or as an isolated training tool, the intercity exchange could be incorporated as an element into formal training. *See* IJA/ABA, *Police Handling, supra* at Commentary to Standard 4.5(b).

Inservice training programs can also be developed with an intercity juvenile officer exchange program to enable officers to observe procedures employed by other jurisdictions. *See Report of the Task Force, supra* at Commentary to Standard 7.7. Such exchanges will broaden the perspectives of officers and lead to more efficient implementation of juvenile services. Intercity training fosters the establishment of better working relationships throughout the entire system and may serve to encourage pre-adjudication disposition and referral to social service agencies as officers become acquainted with more community diversion programs. *Report of the Task Force, supra* at Commentary to Standard 7.7. Rather than using the exchange as a means to reward service or as an isolated training tool, the intercity exchange could be incorporated as an element into formal training. *See* IJA/ABA, *Police Handling, supra* at Commentary to Standard 4.5(b).

Related Standards

2.251 Police-Juvenile Unit
2.252 Specialization Within Patrol Units

Prevention Strategies

Focal Point Social Institutions:
Cor. J-1 Police-Youth Relations

2.3 Intervention by Other Governmental Agencies

2.31 Authority to Intervene

Child protective services agencies, public schools and other designated governmental agencies providing services to juveniles and their families should be statutorily authorized to intervene when there is a reasonable belief that any of the circumstances set forth in Standards 2.12 and 2.13 exist.

Child protective services agencies should be required to develop and maintain the capacity to respond to reports that a juvenile is in danger at any time of the day or night, seven-days-per-week, and should be specifically authorized to investigate reports of neglect or abuse.

Sources:

See generall Model Act for a State Administered Program for the Prevention and Treatment of Delinquency and Neglect, §§14(a)-(d) and 15 (1975); Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §16(a)-(b) (draft, 1977).

Commentary

The standards in this series set forth the principles governing intervention by public agencies other than law enforcement agencies. They cover public child or family services, as well as welfare, health, and education agencies. Private organizations such as hospitals, are not covered unless they are providing intervention services under contract to a public agency. With the emphasis on use of alternatives to the traditional juvenile justice system, it is essential that both the authority of nonlaw enforcement agencies to intervene, and the criteria, rights, and procedures which should apply upon intervention, be clearly defined.

Standard 2.31 recommends that public agencies other than law enforcement agencies be given statutory authority like that of police and sheriffs' departments to intervene when there is a reasonable belief that a child is in need of protection for any of the reasons specified in Standard 2.13, or that noncriminal misbehavior as defined in Standard 2.12 has occurred. *See* Standard 2.21. The recommendation would not extend to such agencies the authority to intervene because of delinquent conduct. The fact that law enforcement agencies have authority to intervene when a child is in danger should not preclude child protective services agencies from establishing and maintaining the capacity to respond in such cases 24-hours-per-day, seven-days-per-week. *See Proposed Model Child Protection Act, supra* at §16(a). Indeed law enforcement officers should defer to child protective services personnel in making referral and custody decisions when a child is in danger unless immediate action is required to assure the juvenile's safety.

The "reasonable belief" called for in the standard is intended to be more than an "inchoate or unparticularized suspicion or 'hunch'." *Terry v. Ohio,* 392 U.S. 1, 27 (1968). The intervening official must be able "to point to specific and articulable facts which taken together with natural inferences from these facts, reasonably warrant the intrusion." *Id.* at 21

Standards 2.321 and 2.322 outline the criteria which should be considered in determining whether to refer a child to the intake unit. Standard 2.33 sets forth the criteria to be considered in determining whether to place in emergency protective custody a juvenile in danger of or actually suffering one of the types of harms described in Standard 2.13. Authority to take into custody a juvenile engaging in noncriminal misbehavior is recommended only for law enforcement officers although this is not intended to prohibit taking a runaway to an appropriate shelter facility. Standards 2.341-2.344 specify the procedures which should apply. These criteria and procedures follow closely those recommended elsewhere in these standards for law enforcement officers and intake unit personnel. *See* Standards 2.221-2.223, and 2.231-2.233.

Most of the other sets of standards and model legislation which address this issue urge that nonlaw enforcement agencies have authority to intervene, but the extent of the permissible type of intervention varies greatly. *Cf.* In addition to the source materials, National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 3.5 and 10.2 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 4.1, and *Standards Relating to Schools and Education,* Standards 1.11 and 1.12 (tentative drafts, 1977).

Related Standards

2.12 Intervention for Noncriminal Misbehavior

2.13	Intervention to Protect Against Harm
2.21	Authority to Intervene—Law Enforcement Agencies
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.33	Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.341	Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
2.342	Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
2.343	Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344	Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.112	Jurisdiction Over Noncriminal Misbehavior
3.113	Jurisdiction Over Neglect and Abuse

Prevention Strategies

Focal Point The Individual:
Cor. F-3 Protective Services
Focal Point Social Institutions:
Cor. F-3 Crisis Intervention

2.32 Decision to Refer to Intake

2.321 Criteria for Referral to Intake—Noncriminal Misbehavior

Agencies authorized to intervene under Standard 2.31 should promulgate written regulations for guiding decisions to refer to the intake unit individuals alleged to have engaged in noncriminal misbehavior.

In determining whether referral best serves the interests of the juvenile, the family, and the community, agency personnel should consider whether there is probable cause to believe that the individual is subject to the jurisdiction of the family court over noncriminal misbehavior, and:

- **a. Whether a complaint has already been filed;**
- **b. The seriousness of the alleged conduct and the circumstances in which it occurred;**
- **c. The nature and number of contacts with the law enforcement agency and the family court which the individual and his/her family has had;**
- **d. The outcome of those contacts; and**
- **e. The availability of appropriate persons or services outside the juvenile justice system.**

A juvenile should not be referred to the intake unit solely because he/she denies the allegations or because the complainant or victim insists.

Sources:

None of the standards or model legislation address this issue directly. *See generally* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Service,* Standards 2.6 and 2.8 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Probation*].

Commentary

The standards in this series set forth the bases on which decisions to refer a juvenile to the intake unit should be made by the appropriate officials of child protective services agencies, public schools and other governmental agencies providing services to juveniles and their families which have been authorized to intervene pursuant to Standard 2.31. Like the provisions on referral decisions by law enforcement officers, these standards draw a distinction between the decision to refer a youth to the next level of the juvenile justice system and the decision to take a youth into custody. *See* Standards 2.33, 2.221-2.223, 2.231-2.233, 3.141-3.145, and 3.151-3.154. It is anticipated that encouraging conscious and separate decisions on referral and custody will result in greater consistency, reduce referrals made solely because of the need to take a child into emergency protective custody, and avoid the taking of youths into custody in conjunction with a referral when a citation or summons would serve.

Standard 2.321 recommends criteria for use in making referral decisions in noncriminal misbehavior cases. Serious questions have been raised about the large number of juveniles alleged to have engaged in noncriminal misbehavior—i.e., unlawful conduct which would not be a crime if committed by an adult—who have been referred to the family court. *See, e.g.,* National Council of Jewish Women, *Symposium on Status Offenders: Proceedings May 17-19, 1976,* 8-13 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior,* 1-21 (tentative draft, 1977); *but see* Arthur, "Status Offenders Need Help Too," 26 *Juvenile Justice* 3 (1975). Consistent with Standard 3.112—Jurisdiction Over Noncriminal Misbehavior, the criteria set forth in this standard seek to limit referrals to the intake unit to those instances in which all available and appropriate noncoercive alternatives for assisting the juvenile and the juvenile's family have been exhausted, and to encourage communities to meet their obligations to juveniles and their families by providing a full range of voluntary services.

Like the provisions on referral decisions made by law enforcement officers, Standard 2.321 urges that written regulations should be established to assist personnel of governmental agencies providing services to juveniles and their families in making referral decisions. To the greatest extent possible, agencies in areas served by a single family court should develop regulations cooperatively to promote consistency. The development process should also include consultation and coordination with the family court, law enforcement agencies, programs affected by referral decisions, representative citizen task forces which include juveniles, and youth advocacy groups. *The National Advisory Committee recommends the development of rules and guidelines governing intake decisions as an action which agencies can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

The standard urges that in making the decision whether or not to refer a noncriminal misbehavior matter to the intake unit, child protective services workers, youth workers, or school officials must first determine that there is probable cause to believe that the conduct falls within the limits of the jurisdiction of the family court over noncriminal misbehavior.

Hence, before referring a matter for possible submission to the family court, they must be aware of facts and circumstances "sufficient to warrant a prudent . . . [person] in believing that . . ."

a. There has been a pattern of repeated unauthorized absences or habitual unauthorized absences from school by a juvenile subject to the compulsory education laws, if any, of the state; or
b. There have been repeated unauthorized absences for more than twenty-four hours from the place of residence approved by the juvenile's parents, guardian, or primary caretaker; or
c. There has been repeated disregard for or misuse of lawful parental authority; or
d. There have been acts of delinquency by a juvenile below age ten. *See* Standard 3.112; *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

Accordingly, interventions based, for example, on a juvenile's having missed a single day of school without permission, or on asocial or dysfunctional behavior by a juvenile because of excessive use of alcoholic beverages, cannot result in referral of the juvenile to the intake unit. *See* Standard 2.12.

The six criteria listed for consideration following the determination of probable cause are parallel to those recommended for law enforcement officers. *See* Standard 2.222. In the context of this standard, the term "seriousness" in paragraph (b) refers to such factors as the length of the juvenile's absences from home or from school and the nature of the demand disregarded or misused, rather than to the extent of harm caused to others. In addition, paragraphs (c) and (d) focus on the family rather than the juvenile alone, since many instances of noncriminal misbehavior are a result of family conflict or require the cooperation of the entire family for their resolution. Like the criteria listed in Standards 2.221-2.223, no one factor is intended to predominate. Each should be considered and weighed against the others.

Finally, it should be noted that the standard attempts to balance the need for sufficient information on which to base a decision, and the juvenile's and family's right to privacy. The standard recognizes that too much as well as too little information can inhibit the decision-making process. By specifying the basic factors which should be taken into account by agency personnel at the point of initial intervention, it seeks to assure the fairness and consistency of referral decisions and limit the use of coercive measures in noncriminal misbehavior cases to the greatest extent possible.

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Disposition Records
1.534	Access to Child-abuse Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
2.12	Intervention for Noncriminal Misbehavior
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.243	Procedures Following Referal to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.31	Authority to Intervene (Nonlaw Enforcement Agencies)
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.341	Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
3.112	Jurisdiction Over Noncriminal Misbehavior
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior

Prevention Strategies

Focal Point Social Institutions:

Cor. F-3	Crisis Intervention
Cor. Ed-2	Alternative Education

Focal Point Social Interaction:

Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct

Focal Point The Individual:

Cor. F-1	Individual and Family Counseling
Cor. Ed-3	Supportive Services

2.322 Criteria for Referral to Intake—Neglect and Abuse

Agencies authorized to intervene under Standard 2.31 should promulgate written regulations for guiding decisions to refer to the intake unit families of juveniles alleged to have been neglected or abused.

In determining whether referral best serves the interests of the juvenile, the family, and the community, agency personnel should consider whether there is probable cause to believe that the family is subject to the jurisdiction of the family court over neglect and abuse, and:

- **a. Whether a complaint has already been filed;**
- **b. The seriousness of the alleged neglect or abuse and the circumstances in which it occurred;**
- **c. The nature and number of contacts with the law enforcement agency, child protective services agency, or family court which the family has had;**
- **d. The outcome of those contacts;**
- **e. The availability of appropriate services outside the juvenile justice system which do not involve removal of the juvenile from the home; and**
- **f. The willingness of the family to accept those services.**

The matter should not be referred to the intake unit solely because the alleged neglect or abuse is denied.

Source:

See generally U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act*, §16(b) (draft, 1977).

Commentary

This standard recommends the criteria which officials of child protective services agencies, public schools, and other designated governmental agencies providing services to juveniles and their families should use in deciding to refer a neglect or abuse matter to the intake unit following intervention. Unlike Standard 2.33—Criteria for Taking Juveniles into Emergency Protective Custody, this provision is written in terms of neglect or abuse rather than juveniles "alleged to have been harmed or in danger of harm," since only cases involving juveniles who are endangered by acts or omissions of their parents, guardian, or primary caretaker are subject to the family court's jurisdiction over neglect and abuse. *See* Standard 3.113. However, pursuant to the recommendations in Standard 2.13, officials of the public agencies enumerated under Standard 2.31 may intervene in a broader range of cases—e.g., children who have become separated from their parents in a crowd—and even take them into emergency protective custody in order to take them home or to an appropriate nonsecure shelter or medical facility, without invoking the jurisdiction of the family court, so long as services other than emergency medical treatment are provided on a voluntary basis. *See* Standards 2.343 and 2.344. This distinction explains the use of the probable cause level of certainty in this provision, and the lower "reasonable belief" level of certainty in Standard 2.33.

Like Standard 2.321, this provision recommends that written regulations should be issued to assist in making referral decisions. To the greatest extent possible, agencies in areas served by a single family court should develop regulations cooperatively so as to promote consistency. The development process should also include consultation and coordination with the family court, law enforcement agencies, programs affected by referral decisions, representative citizen task forces including juveniles, and youth advocacy groups. *The National Advisory Committee recommends the development of rules and guidelines governing referral decisions as an action which agencies can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

Since it is anticipated that individuals, employed by the types of agencies covered in this standard, who are authorized to intervene, will have more specialized training and experience in child neglect and abuse care than law enforcement officers, a more extensive list of factors to be weighed is recommended in this provision than that proposed in Standard 2.223. No one of the criteria contained in paragraphs (a)-(f) is intended to predominate. Each should be weighed and balanced against the others in order to determine the least intrusive and restrictive approach which will adequately protect the juvenile from the actual or threatened harms, the interests of the parents in raising their child, *see Griswold v. Connecticut*, 381 U.S. 479 (1965), and the interest of the community in preventing harm to children. In so doing, the provision recognizes that unnecessary or overly intrusive intervention as well as failure to intervene can result in harm to a child. *See* A. Schuchter, *Prescriptive Package: Child Abuse Intervention* 3-4 (1976); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task*

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Force on Juvenile Justice and Delinquency Prevention, Standard 11.16 and Commentary (1976); Institute for Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Abuse and Neglect,* Standard 1.3 and Commentary (tentative draft, 1977).

The term "seriousness" in paragraph (b) is intended to refer to the severity of the harm to the juvenile and to the likelihood and immediacy of any threatened harm. *See* Standard 3.113. Like the provision on referral decisions in noncriminal misbehavior cases, the standard focuses on the family and is intended to channel as many cases as possible to services outside the juvenile justice system.

Hence, among the factors to be considered in making the intake decisions are listed the family's prior contacts, if any, with the intake unit or the family court, and the results of those contacts—e.g., dismissal of the complaint without referral to services, referral to services and cooperation of the family with those services, or the disposition imposed following adjudication of a petition; the availability of services offered by public or private agencies that are not components of the juvenile justice system; and the willingness of the family to cooperate with those services. *See* Standard 2.321.

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.55	Accuracy of Records
2.13	Intervention to Protect Against Harm
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.31	Authority to Intervene (Nonlaw Enforcement Agencies)
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.33	Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.343	Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344	Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.145	Criteria for Intake Decisions—Neglect and Abuse

Prevention Strategies

Focal Point Social Interactions:
Cor. F-3 Crisis Intervention
Focal Point The Individual:
Cor. F-3 Protective Services

2.33 Criteria for Taking Juveniles Into Emergency Protective Custody

Whenever practicable, an order should be obtained from a family court judge prior to taking into emergency custody a juvenile alleged to have been harmed or to be in danger or harm.

An order should not be used nor a juvenile taken into emergency protective custody without an order unless there is a reasonable belief that any of the circumstances set forth in Standard 2.13 (a)-(c) exist, and it is determined that no other measure can provide adequate protection or that issuance of a summons or citation is inadequate to protect the jurisdiction or process of the family court.

In making this determination, family court judges or authorized child protective services personnel should consider:

a. The nature and seriousness of the harm or threatened harm;
b. The juvenile's age and maturity;
c. The nature and number of contacts with the law enforcement agency, child protective service agency, or family court which the juvenile or family has had;
d. The presence of a parent, guardian, relative, or other person with whom the juvenile has substantial ties, willing and able to provide supervision and care; and
e. The family's record of willful failures to appear following issuance of a summons or citation.

Written rules and regulations should be developed to guide decisions regarding taking juveniles into emergency protective custody.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 5.3, 12.9, and 12.10 (1977) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard sets forth principles and criteria to assist family court judges in deciding whether to order that a child be taken into emergency protective custody and to provide a guide for personnel of child-protective services agencies and other designated governmental agencies providing protective services to juveniles and their families. Protective services agencies should develop and maintain a capacity to respond 24-hours-per-day, seven-days-per-week to report that a child is in danger of harm.

The term "emergency protective custody" refers to brief periods of initial custody, which are necessary when an authorized child protective services officer determines that a child has been sexually abused, or that a child's emotional or physical health is seriously impaired, or that a child's physical health is likely to become seriously impaired. *See* Standard 2.13 (a)-(c); *see also* Standards 2.233, 2.244, 2.343, and 3.157. It covers any situation in which a child's health is seriously impaired or endangered whether or not parents or custodians are responsible. Thus, this standard governs instances in which youths are endangered outside the home—e.g., small children who have become separated from their parents in a crowd, or a traffic accident in which the child is injured, as well as cases of neglect or abuse. *See Report of the Task Force, supra.* In such cases, emergency protective custody will be required solely to take the child home or to a hospital, and no court action will be necessary.

Like Standards 2.231-2.233, this standard states a preference for obtaining an order from the family court before taking a juvenile into custody, but would not preclude action by designated agency personnel when there is no time to obtain such an order. *Accord,* U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §9(a) (1977); *Report of the Task Force, supra* at Standard 12.9. A somewhat lesser degree of certainty is required before a youth may be taken into custody than would be required under Standards 2.231 or 2.232 regarding custody in delinquency or noncriminal misbehavior cases. *See Uniform Juvenile Court Act,* §13 (National Conference of Commissioners on Uniform State Laws, 1968); *Proposed Model Child Protection Act, supra;* A. Sussman and S. Cohen, *Reporting Child Abuse and Neglect: Guidelines for Legislation,* §6 (1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior,* Standards 2.1 and 6.1 (tentative draft, 1977); *but see* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Abuse and Neglect,* Standard 4.1 (A) (tentative draft, 1977). The substitution of the need for a reasonable belief rather than probable cause, the fact that the child would be taken into custody by nonlaw enforcement personnel, and the protective intent of the custody should not be employed as a means of evading the requirements for custody decisions in delinquency and noncriminal misbehavior cases. *See* Standards 2.231 and 2.232. Removing children from their home or even taking them into custody outside the home can often prove extremely traumatic for both the child and the parent. *See Report of the Task Force, supra* at Commentary to Standards 12.9 and 12.10; J. Areen, *Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases,* 887, 889 (1975); J. Bowlby, *Child Care and the Growth of Love* (2nd Ed. 1965); A. Schuchter, *Prescriptive Package: Child Abuse Intervention,* 18 (1976). Hence, before a child is taken into emergency protective custody, there must be demonstratable facts and circumstances supporting the belief that the harm or threat of harm to the child is serious, *see* Standard 2.13 (a)-(c), and that there are no other means of providing protection or preventing the juvenile from fleeing or being taken from the jurisdiction.

The criteria listed in paragraphs (a)-(d) are intended to promote consistency and to assure that all less severe alternatives are considered before a decision is made to take a juvenile into custody. No one of the criteria is intended to predominate. Each should be weighed and balanced against the others in order to determine the least intrusive and restrictive approach which will adequately protect the safety of the child.

Finally, the standard provides that the responsible agencies promulgate rules and guidelines based on the listed principles and criteria. To the greatest extent possible, agencies in areas serviced by a single family court should develop regulations cooperatively to promote consistency. The development process should also include consultation and coordination with the family court, law enforcement agencies, programs affected by referral decisions, representative citizen task forces including juveniles, and youth advocacy groups. *The National Advisory Committee recommends the development of rules and guidelines governing referral decisions as an action which agencies can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

Under no circumstances should a child protective services officer (or any other child protective services personnel) keep any child in emergency protective custody for longer than four hours. Within four hours—and preferably much sooner—the protective services officer must either release the child (pursuant to Standard 2.341), or refer the child for intake as neglected or abused (pursuant to Standards 2.232 and 2.343), or take the child to an appropriate medical facility if the child needs medical care immediately (pursuant to Standard 2.344). *See* Standard 2.233 and Commentary.

When a juvenile is brought to the intake unit, Standard 3.154 provides for an independent determination by the intake officer regarding what type of emergency protective measures are required. If emergency custody is continued, Standard 3.157 calls for a hearing before a family court judge no more than twenty-four hours after the juvenile was taken into custody to review whether there is probable cause to believe that the juvenile is neglected or abused, and if so, whether emergency protective custody is necessary. Standard 3.158 would require periodic review and provides for modification and appeal of decisions to place a juvenile in emergency protective custody.

Related Standards

1.53 Confidentiality of Records
1.533 Access to Intake, Detention, Emergency Custody, and Disposition Records
1.534 Access to Child Abuse Records
1.54 Completeness of Records
1.55 Accuracy of Records
2.13 Intervention to Prevent Harm
2.233 Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.31 Authority to Intervene (Nonlaw Enforcement Agencies)
2.322 Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.341 Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
2.343 Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344 Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.113 Jurisdiction Over Neglect and Abuse
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect Abuse Cases

Prevention Strategies

Focal Point The Individual:
Cor. F-3 Protective Services
Focal Point Social Institutions:
Cor. F-3 Crisis Intervention

2.34 Rights and Procedures

2.341 Procedures Following a Decision Not to Refer to Intake

An individual or family who is not referred to intake by an agency authorized to intervene under Standard 2.31, should be released without condition or ongoing supervision although the individual and his/her family may be provided with services offered on a voluntary basis or referred to or taken to community resources offering services on that basis.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 5.7 and 12.9 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard recommends against the use of "informal probation" or supervision by child protective services, or by agents of other designated agencies authorized to intervene under Standard 2.31. This policy is consistent not only with Standard 2.241, *supra,* but also with the limitations on informal probation recommended in the standards on intake. *See* Commentary to Standards 3.141 and 3.142. All other major standards-setting groups similarly recommend against attempts by police officers to compel "treatment" and "rehabilitation" through informal probation or supervision in the absence of a formal court referral. *See* President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 19 (1967); National Advisory Committee on Criminal Justice Standards and Goals, *Police,* Standard 4.3 (1973); *Report of the Task Force, supra* at Standard 5.7; and Institute for Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Police Handling of Juvenile Problems,* Standard 2.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Police Handling*]. *See also* R. Kobetz and B. Bosarge, *Juvenile Justice Administration* (International Association of Chiefs of Police, 1973). But no other group directly addresses the question of such supervision by nonlaw enforcement agencies. The National Advisory Committee concluded that it would make no more sense to vest protective services personnel with unilateral quasijudicial discretion to attempt to compel participation in probation-type programs, than it would to sanction such authority for the police. If the provision of services is called for, the subject of the complaint should be referred to the proper agency or private program and the complaint promptly dismissed unless the referral is refused, ignored, or shown to be inappropriate within thirty days. *See* Standard 3.142. Informal probation, despite good intentions, can result in imposing substantial constraints on liberty under threat of prosecution without adequate due process safeguards. *See* J.S. Gorelick, "Pretrial Diversion: The Threat of Expanding Social Control," 10 *Harv.C.R.-C.L.L.Rev.* (1975); President's Commission on Law Enforcement and Administration of Justice, *supra* at 17; Kobetz and Bosarge, *supra* at 259; National Council on Crime and Delinquency/National Council of Juvenile Court Judges, *Model Rules for Juvenile Court,* 15 (1969); *but see* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections* 225 (1973). Moreover, many commentators question the effectiveness of "coerced treatment." *See, e.g.,* U.S. Department of Health, Education and Welfare, *Standards for Juvenile and Family Courts,* 58 (1975); and D. Fogel, *We are the Living Proof: The Justice Model for Corrections* (1975).

Although the standard urges that protective services agencies should not induce any individual to utilize services under threat of being referred to the intake unit and the family court, it is not intended to prohibit protective services officers from offering to make services available on a voluntary basis, or from referring or taking an individual to another agency or community resource which offers appropriate services on a voluntary, basis. As long as the provision of services is voluntary, the range of services which protective services agencies may offer to make directly available may be broad.

At the lower end of the scale of possible services are the types of incidental services which even a law enforcement officer may provide without a formal referral to the court intake unit. For example, a protective services officer may—indeed, is obligated to—transport a youth to a runaway shelter or an injured child to a hospital, or an intoxicated juvenile to a voluntary alcohol treatment program. *See* Standards 2.342 and 2.343.

At the upper end of the scale, protective services agencies may offer, on a voluntary basis, to provide whatever services appear needed to hold a family together, to encourage the family to play a preventive role, to prevent recurrences of neglect or noncriminal misbehavior, etc. Such voluntary services may include, but are not limited to, household monitoring and supervision by protective services workers, specifically tailored homemaker services, family and child counseling, and referrals for more intensive psychotherapy and psychiatry, or for any other needed service which the community can provide. *See* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Youth Service Agencies,* Standard 4.6 (tentative draft, 1977). *Cf. Report of the Task Force, supra* at Standards 6.2-6.5; and IJA-ABA, *Police Handling,* supra at Standard 2.5.

No formal record should be retained of contacts which do not result in a youth being referred to the intake unit. As is stated in the Commentary to Standard 1.52—Collection and Retention of Records, in formulating recordkeeping policies, the potential benefits of collecting and retaining information must be weighed against the potential injury to privacy and related protected interests. It was the conclusion of the National Advisory Committee that the danger of misinterpretation and misuse of, or misplaced emphasis on cursory records arising from incidents not warranting referral to the intake unit, substantially outweighed the possible benefits of formal written notification to parents that their child has had contact with a protective services officer. *But cf. Report of the Task Force, supra* at Standard 5.1. When notice of a protective services contact would serve to encourage the family to play a preventative role, e.g., in some cases of noncriminal misbehavior, it can be given informally by either the intervening protective services agency or by another agency or program providing services on a voluntary basis and to which a juvenile has been referred.

Standards 2.342-2.344 set forth the rights and procedures which are applicable when a juvenile has been referred to the intake unit or taken into custody by protective services agency personnel pursuant to Standard 2.33. Standards 2.242-2.247 apply the same principles to enforcement agencies authorized to intervene under Standard 2.21.

Related Standards

2.241 Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.31 Authority to Intervene (Nonlaw Inforcement Agencies)
2.321 Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.322 Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.342 Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
2.343 Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344 Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)

Prevention Strategies

Focal Point The Individual:
Cor. F-1 Individual and Family Counseling
Cor. F-3 Protective Services
Focal Point Social Institutions:
Cor. F-3 Crisis Intervention
Focal Point Social Interaction:
Cor. J-1 Diversion
Cor. J-2 Alternative Approaches to Juvenile Misconduct

2.342 Procedures Following Referral to Intake

Juveniles alleged to have engaged in noncriminal misbehavior and who are referred to the intake unit by agencies authorized to intervene under Standard 2.31 should, at the time of referral, be advised of their rights as set out in Standard 2.247. These rights should be explained in language understandable to the juvenile.

Individuals alleged to have engaged in neglect or abuse and who are referred to the intake unit by agencies authorized to intervene under Standard 2.31 should, at the time of referral, be advised of their rights as set out in Standard 2.343 (C). These rights should be explained in language understandable to the person being referred.

A report should be prepared explaining the reasons for intervention, referral, and if relevant, emergency custody, and a complaint filed if the complaining witness has not done so already. A copy of the report and the complaint should be promptly provided to the intake unit.

Sources:

None of the standards or model legislation reviewed address this issue directly. *See generally* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Probation Function: Intake and Predisposition Investigation Services,* Standards 1.6 and 1.8 (tentative draft, 1977).

Commentary

This standard sets out the procedures applicable whenever an employee of a child protective services agency or other public nonlaw enforcement agency which is authorized to intervene pursuant to Stnadard 2.31, refers any person to the intake unit of the family court. As used in these standards, the term "referral" means the act of officially vesting a case with the "intake unit" of the family court for purposes of possible legal action. This is done by filing a written report and complaint with the intake unit. *See* Standard 2.322.

Under Standard 2.31, child protective services or other authorized nonlaw enforcement agency may intervene in cases of noncriminal misbehavior, *see* Standard 2.12, and in cases where intervention is necessary to protect a juvenile against harm—most commonly in cases of perceived neglect or abuse. *See* Standard 2.13. Accordingly, this standard delineates the procedural obligations of such personnel upon referring to the intake unit persons alleged to have engaged in noncriminal misbehavior, and a parent, guardian, or primary caretaker who is alleged to have engaged in neglect or abuse. These procedural obligations are similar to the obligations of law enforcement officers who make referrals to court under similar circumstances. *See* Standards 2.242 and 2.243.

Whenever a protective services worker refers to intake a person alleged to have engaged in noncriminal misbehavior, that official is to advise the juvenile or adult immediately of his/her rights, prepare a report, and file a complaint if one has not already been filed. When a juvenile has been taken into custody, the agency officer should deliver the juvenile to the agency's intake unit promptly, and in any case within four hours, and should notify the juvenile's parents, guardian, or primary caretaker. *See* Standard 2.343. In cases in which the juvenile is in need of emergency medical services, the applicable procedures are delineated in Standard 2.344.

None of the other standards-setting groups or model acts fully addresses the procedures which apply following intervention in noncriminal misbehavior cases. The IJA/ABA Joint Commission prescribes certain limited procedures (such as notice to parent) when a child's physical safety requires "limited" short-term police custody, or where a child has run away from home. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to noncriminal Misbehavior,* Standards 2.1 *et. seq.,* and 3.1 *et seq.* (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Noncriminal Misbehavior*]. However, the IJA/ABA Joint Commission removes status offenders from the jurisdiction of the family court. *Id.* at Standard 1.1. The *Uniform Juvenile Court Act* includes jurisdiction over "unruly" children, and does not distinguish between the procedures which apply to juveniles who are alleged to be unruly and those alleged to be delinquent. *Uniform Juvenile Court Act,* §16 (National Conference of Commissioners on Uniform State Laws, 1968). The only procedural distinction in the *Uniform Juvenile Court Act* is a prohibition upon placing unruly, disobedient children in "a jail or other facility intended or used for the detention of adults charged with criminal offenses or of children alleged to be delinquent." *Id.* The National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention* (1976) [hereinafter cited as *Report of the Task Force*], addresses some but not all questions regarding postintervention procedures in noncriminal misbehavior. For example, the *Report of the Task Force, supra* does not appear to address directly whether a child alleged to have engaged in noncriminal misbehavior must be administered *Miranda*-type warnings. *See Report of the Task Force, supra* at Standard 5.8 and Commentary. However, the Task Force does provide for "immediate" delivery of such children to the intake unit, and prohibits police from holding nondelinquent youths (except certain "runaways") in secure police detention facilities. *See Report of the Task Force, supra* at Standards 5.9 and 12.8, and Commentary.

This standard explicity extends to youths alleged to have engaged in noncriminal misbehavior, the constitutional requirements delineated in *Miranda v. Arizona*, 384 U.S. 486 (1966). It provides that protective services officers must explain to the person detained that he/she has a right to remain silent, is entitled to an attorney, that any statements made may be used against him/her, that he/she may stop answering questions at any time, and that he/she may have present a parent, guardian, primary caretaker, or another "friendly" adult as provided in Standard 2.247(d). This recommendation is consistent with the recommendation in Standard 3.171 that parties in noncriminal misbehavior cases should be entitled to the same rights as those applicable in delinquency proceedings. Although these standards prohibit the confinement of a youth found involved in noncriminal misbehavior in any "secure" detention or correction facility, *see* Standards 3.183, 4.21, and 4.26, the consequences of noncriminal misbehavior still include both the stigma of being labeled as disobedient and unruly or, for the child under ten, as a child who commits delinquent acts. *See* Standard 3.112(d). The child alleged to have engaged in noncriminal misbehavior also faces the possibility of placement for up to six months in a "nonsecure" residential facility. *See* Standard 3.183. Furthermore, while these standards depart from such practice, *see* Standards 3.112 and 3.183, a large proportion of the resources of American family courts have historically been devoted to the detention and incarceration of "status offenders." *See* Commentary to Standard 3.112. Accordingly, there appears to be no sound basis for affording juveniles alleged to have engaged in noncriminal misbehavior less stringent pretrial procedural protections than those accorded to alleged delinquents. Applying the *Miranda* requirements to noncriminal misbehavior cases will also reduce the possibility that jurisdiction over noncriminal misbehavior might be used by some child protective services officers as a means to circumvent the strictures placed upon police officers conducting delinquency investigations.

Upon referring a case to the intake unit, the agency official must prepare a written report clearly explaining the reasons for referral and, if relevant, custody. This report will serve as a basis for further investigation by a law enforcement agency, the protective services agencies, the intake unit, and by the family court section of the prosecutor's office. The report will also provide a means for monitoring referral and custody decisions in order to promote consistency and even-handed treatment. Such monitoring is particularly important in noncriminal misbehavior cases, where the determination whether to intervene is frequently a close and difficult decision. In addition, if a complaint has not already been filed, the intervening official must file one promptly. *See* Standard 2.240. However, it is anticipated that in many noncriminal misbehavior cases a complaint will already have been filed by a school official or family member before the youth is taken into custody.

In addition to rights and procedures regarding persons alleged to have engaged in noncriminal misbehavior, this standard also describes the similar responsibilities of nonlaw enforcement agency officials upon citing a juvenile's parent or primary caretaker for neglect or abuse. Standard 2.343 describes in more detail the procedures required upon taking into custody (pursuant to Standard 2.33) a child who allegedly has been neglected or abused.

This provision recommends that agency personnel should administer the full and precise warnings called for in *Miranda* to parents, guardians, or primary caretakers accused of neglect or abuse. Thus, after a referral to intake, persons charged with neglect and abuse should have explained, in language understandable to them, their right to remain silent, their rights to an attorney, the fact that any statements they make may be used against them, and their right to stop responding to questions at any time. *See Miranda v. Arizona*, 384 U.S. 436 (1966); *see also* Standards 2.244 and 3.171. Other standards-setting groups have not gone as far as the National Advisory Committee's recommendation of full *Miranda*-type warnings in such cases. The IJA/ABA Joint Commission volume governing abuse and neglect does provide certain procedures applicable to parents or others charged in connection with abuse and neglect, e.g., Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Abuse and Neglect*, Standards 4.3(A), 5.1(E) and Standard 4.1(A) (tentative draft, 1977). However, under the approach taken by the IJA/ABA Joint Commission, such formal notifications do not occur until a petition is filed by the agency taking custody of the allegedly neglected or abused child. *Id.* The IJA/ABA Joint Commission would not appear to require notice of the right to remain silent regarding allegations of abuse or neglect. *Id* at Standard 5.1(D).

The National Advisory Committee concluded that persons accused of abuse or neglect should receive full *Miranda* warnings, whether or not their child has been taken from them and into protective custody. *See* Standard 2.343. Such persons are often threatened with the permanent loss of the companionship of their children, with stigmatization as "abusive" or "neglectful," and with the possibility of a parallel criminal prosecution. Therefore, the agency official who comes into contact with parents, guardians, or primary caretakers during or after taking their child into emergency protective custody should at least tell such persons the truth—that anything they say may (and probably will) be used against them, and that they are entitled to all the additional rights identified in *Miranda*. Furthermore, in the relatively small percentage of cases where criminal charges against an abusive parent or caretaker may be appropriate, failure to properly instruct before obtaining admissions could prove fatal to the prosecution's case. Standard 2.244 imposes the same *Miran-*

da-type warning requirement upon police officers acting in neglect and abuse cases.

As is the case following referral for noncriminal misbhavior, a report should be filed which explains the reasons for intervention and for referral to the intake unit, together with a complaint if one has not previously been filed. A copy of the report and complaint should be promptly given to the intake unit. In either noncriminal misbehavior or neglect and abuse cases, if a petition is filed the report should be made available during discovery to counsel for the individuals charged with neglect or abuse. *See* Standard 3.167.

Related Standards

2.243 Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244 Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.248 Form of Complaint
2.31 Authority to Intervene (Nonlaw Enforcement Agencies)
2.321 Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.322 Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.341 Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
2.343 Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344 Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parents
3.141 Organization of Intake Units
3.142 Review of Complaints
3.171 Rights of the Parties

2.343 Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody

Juveniles alleged to have been neglected or abused who are taken into custody by authorized child protective services personnel, should be taken directly to the intake unit or to a facility authorized to provide care for such juveniles without delay, unless the juvenile is in need of emergency medical treatment. If a juvenile's parent, guardian, or primary caretaker may be unaware that the juvenile has been placed in emergency custody, the individual taking the juvenile into custody should assure that such persons are advised, in language understandable to them:

a. Of the fact that the juvenile has been taken into protective custody;
b. Of the reasons therefor;
c. Of their rights, including their right to remain silent, their rights to an attorney, the fact that any statements they make may be used against them, and their right to stop answering questions at any time; and
d. That they should contact the intake unit immediately.

Source:

See generally U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* §9(c) and (e) (draft, 1976).

Commentary

This standard describes the responsibilities of authorized child protective services personnel or officials of other agencies authorized to intervene under Standard 2.31, upon taking into custody (pursuant to Standard 2.33) a youth who allegedly has been neglected or abused. In large measure, it parallels Standard 2.244 which describes the responsibilities of law enforcement officers acting under similar circumstances.

The standard directs that allegedly neglected or abused children taken into custody should be brought, without delay, directly to the intake unit or to a shelter care, foster home, or other facility specifically designated to provide care to neglected and abused children. *See* Standards 4.25 and 4.27; *cf.* Standards 2.242 and 2.243; Commentary to Standard 3.154; and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.9 and Commentary (1976) [hereinafter cited to *Report of the Task Force*]. The only exception to taking the child directly to the intake unit is when the child is in need of emergency medical treatment. *See* Standard 2.344. *See* Commentary to Standard 2.244. To assure immediate postcustody placement in an appropriate environment, the IJA/ABA Joint Commission makes provision for a designated state agency to render temporary custodial care to abused and neglected children. *See* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 4.1(c) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]. Similarly, the *Model Child Protection Act, supra* requires the establishment of an adequate, appropriate, and well-planned facility, which operates on a regular basis to shelter abused and neglected children. *Model Child Protection Act, supra* at §9(c) and (e). *See also Report of the Task Force, supra at* Commentary to Standard 12.9. These standards, likewise, require the provision of adequate shelter care facilities which meet the criteria specified in Standard 4.27.

Upon taking an allegedly neglected or abused child into emergency protective custody, the agency official has the duty under this standard to notify the child's parents, guardians, or primary caretaker only if they were not present when the action was taken or in other circumstances in which they may be unaware of what has occurred, e.g., when the neglect or abuse occurs or is discovered at school, in an institution, or elsewhere outside the home. Specifically, the intervening official should report to the parent the fact that the child is in custody, the reasons for custody, and the intake unit that is handling the matter. However, the protective services officer is not required to disclose the exact location where the child is being held as part of the initial notice to the parent. In most cases, the child will be brought to the intake unit. However, in cases of unusual or severe abuse or neglect—where there is reason to believe the parent or primary caretaker may attempt forcibly to regain custody of the child, or where it is otherwise necessary to limit contact between the parent and child—the exact location of the child should not be disclosed in the initial notice given to the parent. *Accord, Proposed Model Child Protection Act, supra* at Commentary §9(e). Particularly where parental visitation is thus curtailed, speedy review by the family court of the initial custody decision is imperative. *Accord, Proposed Model Child Protection Act, supra.* Standard 3.15 provides for such prompt judicial review within no more than twenty-four hours after custody

The standard provides further that if a protective services worker comes into contact with a parent, guardian, or primary caretaker after a decision has been made to refer that person to intake for neglect or abuse, the officer should promptly administer the full and precise warnings called for in *Miranda v. Arizona*, 384 U.S. 436 (1966). Thus, after a decision to refer to intake (or after a child has been taken into emergency protective custody for alleged neglect or abuse), persons charged with neglect and abuse should have explained, in language understandable to them, their right to remain silent, their rights to an attorney, the fact that any statements they make may be used against them, and their right to stop responding to questions at any time. *See Miranda.* This is consistent with Standard 3.171, which applies after the court proceeding is underway, and which grants to individuals accused of neglect or abuse essentially the same procedural rights as a respondent in a delinquency proceeding. Persons alleged to have abused or neglected a child are often threatened with the permanent loss of the companionship of their children, with stigmatization as "abusive" or "neglectful," and with the possibility of a parallel criminal prosecution. Therefore, the child protective services officer who comes into contact with parents, guardians, or primary caretakers during or after taking their child into emergency protective custody should at least tell such persons the truth—that anything they say may (and probably will) be used against them, and that they are entitled to all the additional rights identified in *Miranda*. Furthermore, in the relatively small percentage of cases where criminal charges against an abusive parent or caretaker may be appropriate, failure to properly instruct before obtaining admissions could prove fatal to the prosecution's case. Standard 2.244 imposes the same *Miranda*-type warning requirement upon police officers acting under the same circumstances.

Other standards-setting groups have not gone as far as this recommendation. The IJA/ABA Joint Commission volume governing abuse and neglect does provide certain procedures applicable to parents or others charged in connection with abuse and neglect, e.g., IJA/ABA, *Neglect*, supra at Standards 4.1(A), 4.3(A), and 5.1(E). However, under the approach taken by the IJA/ABA Joint Commission such formal notifications do not occur until a petition is filed by the agency taking custody of the allegedly neglected or abuse child. Also, the IJA/ABA Joint Commission would not appear to require notice of the right to remain silent regarding allegations of abuse or neglect. *Id.* at Standard 5.1(D).

Related Standards

2.13	Intervention to Protect Against Harm
2.244	Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.31	Authority to Intervene (Nonlaw Enforcement Agencies)
2.341	Procedures Following a Decision not to Refer to Intake (Nonlaw Enforcement Agencies)
2.342	Procedures Following a Referral to Intake (Nonlaw Enforcement Agencies)
2.344	Procedures When a Juvenile is in Need of Immediate Medical Care
3.113	Jurisdiction Over Neglect and Abuse
3.133	Representation by Counsel—For the Parents
3.141	Organization of Intake Units
3.142	Review of Complaints
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.171	Rights of the Parties
4.25	Foster Homes
4.27	Shelter Care Facilities

2.344 Procedures When a Juvenile is in Need of Immediate Medical Care

The procedures and criteria applicable to law enforcement officers under Standard 2.245 should also apply when personnel of agencies authorized to intervene under Standard 2.31 have probable cause to believe that a juvenile is in immediate need of medical care.

Source:

See generally Office of Youth Development, Department of Health, Education and Welfare, *Model Act for Family Courts*, §19(g) (1974).

Commentary

This standard sets out the procedures applicable when an employee of a child protective services agency (or other public agency), who is authorized to intervene (pursuant to Standard 2.31) discovers a child who is malnourished, injured, or otherwise seriously ill. Most commonly the situation addressed here arises where a protective services officer takes a medically endangered child into custody during an investigation of neglect or abuse. *See* Standards 2.31 and 2.13. For analogous provisions, *see* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse*, Standard 4.1 (tentative draft, 1977), *and Standards Relating to Noncriminal Misbehavior*, Standard 6.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*, and IJA/ABA, *Noncriminal Misbehavior*, respectively]; and the *Model Act for Family Courts, supra; cf.* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status*, Standard 4.5(A)(1)(b) (tentative draft, 1977); the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 12.9 and 12.10 (1976); and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Rights of Minors*, Standard 4.5 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Rights of Minors*].

A number of safeguards are required whenever a public agency employee seeks to take a child in his/her custody directly to a medical facility. These include the requirement that the child protective services or other authorized agency employee have probable cause to believe that a medical emergency exists before taking a child in his/her custody directly to any medical facility, the child's medical needs must be urgent and immediate; a court hearing must be held within at least twenty-four hours after the child is taken into custody; a written notice and report explaining the actions taken must be promptly communicated to the parent, guardian, or other primary caretaker. *See* Standard 2.245.

For probable cause, the employee must be aware of facts and circumstances "sufficient to warrent a prudent . . . [person] in believing that . . ." a juvenile whom the official has taken into custody is an immediate need of medical care. *See, e.g., Beck v. Ohio*, 379 U.S. 89, 91 (1964). *See also* Standards 2.231, 2.232, and 3.155. The IJA/ABA standards governing neglect and abuse also require a level of certainty equal to probable cause. *See* IJA/ABA, *Neglect, supra* at Standard 4.1. In contrast, the analogous IJA/ABA standard governing noncriminal misbehavior, which deals with medical emergencies caused by mental or emotional disorders, requires only "reasonable cause" to believe there is "an immediate need for emergency medical care." IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 6.1. *See* Commentary to Standard 2.245.

The standard's requirement of probable cause rather than a mere "reasonable belief" of immediate medical necessity is intended to prevent any tendency by agency employees to interpret this standard as a catch-all provision justifying emergency custodial intervention even where the child's health is not seriously impaired or threatened, *see* Standards 2.13 and 2.33, and even where no other independent basis for custody exists. For example, under related standards, an authorized child protective services employee may intervene and take a child into emergency protective custody based upon the officer's reasonable belief that the child's physical or emotional health is seriously impaired, and that no measure other than intervention can adequately protect the child. *See* Standards 2.13 and 2.33; *see also* Standard 2.233. If such independent criteria for intervention and custody were satisfied, this standard would authorize the agency employee to take the child directly to an appropriate medical facility, but only if in addition the employee had probable cause to believe the child needed immediate medical care. Removing children from their home or even taking a child into custody outside the home can often prove extremely traumatic for both the child and the parent. *See* Commentary to Standards 2.233 and 2.33. Even a brief stay by the child in a medical facility can compound this trauma, particularly where the facility is a mental hospital or a similar institution. Therefore, this standard requires that before taking a child to a medical facility, an authorized child protective services employee must have an independent basis to intervene (based upon Standard 2.11, 2.12, or 2.13), an independent basis to take the youth into custody (based upon Standard 2.33) and, in addition, probable cause to believe that the youth is in immediate need of medical care (based upon this standard). In protective custody cases, it is anticipated that the facts which give the employee "probable cause" to take a child directly to a medical facility will arise from the same circumstances which originally gave the employee a "reasonable belief" that the child must be taken into emergency protective custody in order to prevent serious impairment of the child's physical or emotional health. *See* Standards 2.13 and 2.33.

With regard to the requirement of an "immediate need for medical care" although the term encompasses serious manifestations of mental disorder as well as physical illness, it is not intended to authorize emergency medical custody where a child merely "acts out," or is upset emotionally, but where there is not probable cause to believe that a true medical emergency exists. Similarly, Standard 2.13(b) does not authorize initial intervention to protect a child against emotional harm unless the child's emotional or mental health is already seriously impaired.

Where evidence of a mental or emotional disorder, or of drug intoxication, is the basis for emergency medical custody, the protective services officer should have probable cause to believe that the juvenile is suicidal or is seriously assaultive or seriously destructive toward others, or otherwise similarly shows an immediate need for medical care. These guidelines track the more detailed provisions in IJA/ABA, *Noncriminal Misbehavior*, *supra*, particularly Standard 6.1.

Unlike the *Model Act for Family Courts*, *supra*, this standard does not authorize a protective services employee to take a child in custody directly to a medical facility for the mere purpose of obtaining a "diagnosis for evidentiary purposes." *See Model Act for Family Courts*, §19(g). in the absence of an immediate need for medical care or treatment. The IJA/ABA standards on noncriminal misbehavior are in general accord with this position, and require an "immediate need for emergency psychiatric or medical evaluation *and possible care*" before a child may be taken to a psychiatric or medical facility. IJA/ABA, *Noncriminal Misbehavior*, *supra* at Standard 6.1 (emphasis added).

For notice, the standard requires that an agency employee who takes a youth to a medical facility must assure that the youth's parents, guardian, or primary caretaker, are promptly advised of the juvenile's condition and location in addition to any information to which such persons are promptly entitled under Standards 2.342-2.343. *Accord*, IJA/ABA, *Noncriminal Misbehavior*, *supra* at Standard 6.2. *See* IJA/ABA, *Rights of Minors*, *supra* at Standard 4.2 and 4.5(B). This notice provision is explained in the Commentary to Standard 2.245.

Each juvenile admitted to a medical facility after action by an authorized child protective services employee under this standard should be evaluated as soon as possible and should be offered appropriate medical care. The guidelines assuring "informed consent" spelled out in the Commentary to Standard 2.245, *supra*, should be followed. However, no consent should be required for treatment deemed necessary to save a child's life.

The third paragraph of this standard explains what action is required when the attending physician determines either that the necessary medical care can be provided on an out-patient basis, or that no medical care is in fact necessary. Where out-patient care (or no medical care at all) is appropriate, and where custody is not required under the criteria set out in Standard 2.33, the protective services employee should release the juvenile into the care of a parent or other suitable caretaker with whom the child has substantial ties. This is in keeping with the principle throughout these standards limiting the occurrence and scope of intervention into the lives of juveniles. *See, e.g.*, Commentary to Standard 2.231. If out-patient care is appropriate but custody is required on some basis independent of the child's medical needs, the juvenile should be taken directly from the medical facility either to the intake unit or to a facility designated to provide care to neglected or abused children. *See* Standard 2.343.

The final paragraph of the standard requires that a full report be given to the parent explaining why emergency medical action was taken. It is anticipated that in some cases the taking of a juvenile into custody in order to secure emergency medical care will not require or result in referral to the intake unit. For example, in the "lost child" situation where a child is injured after being separated from parents, both emergency custody and emergency hospitalization are necessary although no court action is contemplated or required. Therefore this standard provides that a copy of the agency employee's report should always go directly to the parent or caretaker, and that an additional copy should go to the intake unit only if the youth is in fact referred to intake. *See* Standard 2.342. When a referral is made, the "notice" and the "report" required by this standard should be in combined form where possible for reasons of efficiency.

Related Standards

2.12	Intervention for Noncriminal Misbehavior
2.13	Intervention to Protect Against Harm
2.245	Procedures When a Juvenile is in Immediate Need of Medical Care (Law Enforcement Agencies)
2.31	Authority to Intervene (Nonlaw Enforcement Agencies)
2.33	Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.341	Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
2.342	Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
2.343	Procedures Upon Taking a Neglected or Abused Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
3.141	Organization of Intake Units

THE ADJUDICATION FUNCTION

The Adjudication Function

Introduction

The standards in this chapter address the jurisdiction and organization of the court having matters relating to juveniles, the rights of the parties in delinquency, noncriminal misbehavior, neglect and abuse proceedings, and the criteria and procedures applicable to intake, detention, and dispositional decisions.

The first series of Standards, 3.11-3.118, recommends establishment of a family court with jurisdiction over all matters affecting juveniles and their families other than tort, contractual, and probate questions. Detailed definitions of the family court's jurisdiction over delinquency, neglect and abuse, and noncriminal misbehavior are offered. With regard to noncriminal misbehavior, Standard 3.112 urges that the court should exercise its authority only when all appropriate noncoercive alternatives have been exhausted. Subsequent standards make clear that if noncriminal misbehavior is proven beyond a reasonable doubt, both the family and the relevant service agencies as well as the juvenile should be involved in developing an appropriate disposition and should be subject to the court's dispositional authority. At no time under these standards would placement in a detention or a correctional facility of a juvenile alleged or found to have engaged in noncriminal misbehavior be sanctioned. As for neglect and abuse, Standard 3.113 emphasizes that judicial intervention should occur only when a child's health is impaired or demonstrably threatened, and not when there is merely disagreement with the parent's values, life style, or words. A further explanation of the terms of and reasoning underlying these recommendations is contained in the commentary to these standards. Other issues addressed in the 3.11 series include the scope of federal delinquency jurisdiction, transfers of cases from the jurisdiction of the family court, and the maximum and minimum ages at which juveniles are subject to the family court's jurisdiction over delinquency and noncriminal misbehavior.

The provisions in the 3.12 series cover the relationship of the family court to other courts, the tenure and qualifications of family court judges, and the employment of referees and court administrators. They urge, *inter alia,* that the family court should be a decision of the highest court of general jurisdiction, and that ordinarily, an assignment of a judge to the family court be limited to two consecutive two-year terms.

The third series of standards in this chapter delineate the right to and the role of counsel for the state, the juvenile, and the juvenile's parents in family court proceedings. When adopted, these provisions—together with those in the 3.16, 3.17 and 3.19 series—would provide each party in delinquency and noncriminal misbehavior proceedings with the rights afforded juveniles under *In re Gault,* 387 U.S. 1 (1967), *In re Winship,* 397 U.S. 358 (1970), and *Breed v. Jones,* 421 U.S. 518 (1975), plus those due defendants in criminal proceedings other than the rights to indictment by a grand jury, trial by jury, and money bail. The same rights apply in neglect and abuse proceedings except that the level of proof required for a finding of abuse or neglect is clear and convincing evidence rather than proof beyond a reasonable doubt. The fundamental interests at stake in delinquency, noncriminal misbehavior, and neglect and abuse proceedings, warrant the extension of the full state of due process safeguards. These series of standards also suggest the time limits which should apply in family court proceedings, outline the role of guardians *ad litem,* and urge that a ban be placed on pleabargaining in delinquency, noncriminal misbehavior, and neglect and abuse cases.

Like the standards in the chapter on the Intervention Function, the 3.14 and 3.15 series distinguish between the decision to recommend initiation of formal court proceedings and the decision on whether the juvenile should be detained or held in emergency protective custody. Standards 3.141-3.147 outline the organization of intake units, the qualifications of intake officers, and the procedures, alternatives, and procedures applicable to intake investigations and decisions. Standards 3.151-3.158

examine the bases for improving pre-adjudication restraints on a juvenile's liberty and recommend stringent judicial review of all restraints imposed. Placement of juveniles alleged to have committed a delinquent act in secure facilities is limited to a set of closely defined situations. Placement of juveniles alleged to have engaged in noncriminal misbehavior or have been neglected or abused in detention facilities would be totally prohibited under these standards as would placement of any juvenile in a facility on which he/she would come into contact with adults alleged or found to have committed a crime. *See* 42 U.S.C. §§5633(a)(12) and (13) (Supp. 1979).

The standards on disposition, 3.181-3.1813 set forth the procedures and criteria which the family court should follow in making dispositional decisions and describe the procedures for review, modification, and enforcement of dispositional orders. While the criteria are intended to channel the current open discretion enjoyed by juvenile and family court judges in many jurisdictions, they provide the court with greater authority over the supervisory programs and services to be provided.

The final standard in this chapter discusses the rights to which juveniles should be entitled in adjudicatory type proceedings before administrative, correctional, and educational agencies. The standard is intended to assure that basic safeguards are present whenever the juvenile is threatened by a government agency with the substantial abridgement of a fundamental right, the curtailment of an enertial benefit or the imposition of sanctions.

It is anticipated that the standards in this chapter, if implemented, will provide for greater equity, consistency and fairness in proceedings affecting juveniles, a more efficient and respected court, and a stronger, more effective system of justice for juveniles, their families, and the public.

3.1 The Courts
3.11 Jurisdiction

Jurisdiction over matters relating to juveniles should be placed in a family court.

The family court should have exclusive original jurisdiction over matters relating to delinquency as specified in Standard 3.111; noncriminal misbehavior as specified in Standard 3.112; neglect or abuse of juveniles as specified in Standard 3.113; adoptions and terminations of parental rights; appointment of a legal guardian for juveniles; admission for services for the mentally ill or mentally retarded persons and persons addicted to alcohol or narcotic drugs; the interstate compacts on juveniles and on the placement of children; divorce; separation; annulment; alimony; custody and support of children; paternity; and the uniform, reciprocal enforcement of support act; as well as intra-family criminal offenses and contributing to the delinquency of a minor as specified in Standard 3.117.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 8.2 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards and Goals, *Standards Relating to Court Organization and Administration, Alternative Standard* (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Court Organization*]; U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Sections 7, 10 (1975).

Commentary

This standard endorses the formation of a family court with jurisdiction over most matters affecting juveniles and families. Several states (including Delaware, Hawaii, New York, and Rhode Island), the District of Columbia, and a number of counties have adopted the family court model, although the scope of jurisdiction varies significantly. The remaining states rely on the traditional juvenile court structure with jurisdiction limited primarily to delinquency, noncriminal misbehavior, neglect, abuse, adoption, and the Interstate Compacts on Juveniles and on the Placement of Juveniles.

As noted in the introduction to the Task Force's chapter on court structure:

> Today's reality in the overwhelming majority of states is that families beset with legal problems are dealt with by different courts or court divisions, different judges, and different probation personnel. Even lawyers are sometimes uncertain as to the particular forum where an action should be initiated. Characteristically the child's delinquency is heard in one court, his parent's divorce in a second court, a family member's mental illness commitment proceedings in still a different court, and an assault between two members of his family in yet another court. Typically there is no systematic provision for different judges to learn of the related cases which have involved this family. Information which is important to developing carefully crafted decisions is frequently unavailable to the decision maker. Further, there may be organizationally separate juvenile probation, felony probation, misdemeanor probation, court domestic relations counselors, and a variety of social service personnel, all operative with this family in an uncoordinated fashion.

It is anticipated that the family court structure will allow a more consistent approach to the solution of legally-related family problems and eliminate many of the artificial jurisdictional and administrative barriers that have developed.

The scope of jurisdiction recommended in the standard is substantially the same as that proposed by the *Report of the Task Force, supra,* and, with one major exception, parallels the position adopted by the IJA/ABA, *Court Organization, supra,* and the *Model Act for Family Courts, supra.* That exception is the inclusion of jurisdiction over noncriminal misbehavior. A definition of this jurisdiction appears in Standard 3.112. Explanations of the jurisdiction over delinquency, neglect and abuse, intra-family offenses, and contributing to the delinquency of a minor are presented in Standards 3.111, 3.113, and 3.117, respectively. Like the source materials, this standard recommends that the family court handle commitment or admission to services proceedings involving adults as well as juveniles. This is premised upon the major impact on a family when a parent is placed in or returned from a residential facility because of mental illness, or alcohol or drug addiction, and the need for ancillary services in many cases in which out-patient treatment is ordered. There will, of course, be some commitment proceedings involving individuals who do not have a family. However, the additional burden imposed by these cases is not anticipated to be significant enough to warrant splitting the jurisdiction over commitments.

Although it is anticipated that the family structure will be a more efficient as well as more effective way of dealing with family legal problems, the expansion of juvenile court jurisdiction must be accompanied by a concomitant expansion in resources. It is anticipated that this reallocation of resources will be facilitated if the family court is included as a division of the highest court of general jurisdiction. *See* Standard 3.121.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
1.422	Training of Judicial Personnel
3.111	Jurisdiction Over Delinquency
3.112	Jurisdiction Over Noncriminal Misbehavior
3.113	Jurisdiction Over Neglect and Abuse
3.114	Jurisdiction of the Federal Courts Over Delinquency
3.115	Maximum and Minimum Age
3.116	Transfer to Another Court—Delinquency
3.117	Transfer of Jurisdiction—Intra-family Criminal Offense, Contribution to the Delinquency of a Minor
3.118	Venue
3.121	Relationship to Other Courts
3.125	Employment of a Court Administration
4.11	Role of the State

Prevention Strategies

Focal Point Social Interaction:
Re: J-1 Statutory Changes and Reform

3.111 Jurisdiction Over Delinquency

The jurisdiction of the family court over delinquency should include only violations of an applicable federal, state, or local statute or ordinance that would be designated as criminal if committed by an adult, and violations of an applicable state or local statute or ordinance defining a major traffic offense.

For purposes of these standards, major traffic offenses include any traffic offense charged against a juvenile who was too young to obtain a license to drive at the time the offense is alleged to have occurred; vehicular homicide; reckless driving; driving while under the influence of alcohol, narcotics, or dangerous drugs; leaving the scene of an accident; and traffic offenses for which there is a mandatory term of incarceration upon conviction.

All traffic offenses not enumerated above should be cognizable in the court or administrative agency having jurisdiction over adults for such offenses, notwithstanding that the alleged offender's age is within the limits set by Standard 3.115.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 9.1 and 9.7 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard defines the types of conduct cognizable under the delinquency jurisdiction of the family court over delinquency. It includes all conduct that would be a criminal offense if committed by an adult. No distinction is made between felonies, misdemeanors, violations of local ordinances, or violations of regulatory provisions to which criminal penalties have been attached. This follows the definition adopted by the *Report of the Task Force, supra*, and the *Uniform Juvenile Courts Act*, section 2(2) (National Conference of Commissioners on Uniform State Laws, 1968). *But see* U.S. Department of Health, Education and Welfare, *A Model Act for Family Courts* (1975) (local ordinances not specifically included); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Delinquency and Sanctions*, Sections 2.2-2.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Sanctions*] (offenses not punishable by imprisonment and certain "victimless crimes" excluded). Although all states define delinquency to include conduct that would be a felony if committed by an adult, some make a distinction between delinquent and "miscreant" (i.e., misdemeanor) offenses, and others do not specifically include violations of municipal or other local ordinances by juveniles within the definition of delinquency.

The standard also recommends that serious traffic offenses and traffic offenses committed by juveniles too young to obtain a driver's license should be handled by the family court. The exclusion of minor traffic violations from delinquency jurisdiction is based on several considerations: juvenile drivers are exercising adult privileges and should assume at least some adult responsibilities; minor traffic violations are essentially administrative matters and are not evidence of delinquency requiring rehabilitative remedies; and excluding minor traffic offenses would leave the family court free to devote its resources and energy to more serious matters. On the other hand, serious traffic offenses and those committed by children too young to qualify for a license should not be so frequent as to "overload the court and reduce the opportunity for individualized treatment," *Report of the Task Force, supra* at Commentary to Standard 9.7, and the dispositions available to the family court are far more appropriate for juveniles who have committed a major traffic offense than the jail terms and high fines imposed on adults in such cases. *Report of the Task Force, supra;* IJA/ABA, *Sanctions, supra* at Standard 2.2; *see also Uniform Juvenile Court Act, supra;* and *Model Act for Family Courts, supra.* Most states distinguish between major and minor offenses for purposes of juvenile or family court jurisdiction, although the definition of what constitutes a major traffic offense varies.

The jurisdiction of the family court over delinquency should not include conduct that would not be a crime if committed by an adult nor violations of dispositional orders in noncriminal misbehavior cases. *See* Standards 3.112 and 3.1811. A careful effort has been made throughout these standards to distinguish between the considerations that should apply to and the alternatives that should be available in delinquency and noncriminal misbehavior cases. *See* Standards 2.11, 2.12, 2.221, 2.222, 2.231, 2.232, 2.242, 2.243, 2.31, 3.143, 3.144, 3.151, 3.152, 3.153, 3.188, 3.183, 4.21, 4.22, and 4.26. Most of the recent standards and model legislation efforts have strongly urged that juveniles who fail to attend school, run away, or who "are beyond parental control" not be treated or identified in the same manner as juveniles who steal or who harm property or other people. See *Report of the Task Force, supra;* IJA/ABA, *Sanctions, supra;* Institute of Judicial

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Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior* (tentative draft, 1977); *Model Act for Family Courts, supra;* President's Commissions on Law Enforcement and Administration of Justice, *Task Force* Report: Juvenile Delinquency and Youth Crime, 25-26 (1967); National Advisory Committee on Criminal Justice Standards and Goals, *Courts*, 294 (1973); *see also* 42 U.S.C. Sections 5633(a)(12) and 5701 et.seq. (Supp. 1979) (*Juvenile Justice and Delinquency Act* and the *Runaway Youth Act*). Most states currently distinguish, at least to some extent, between juveniles engaging in noncriminal misbehavior and those who have committed a delinquent act.

Related Standards

2.11 Intervention for Commission of a Delinquent Act
2.221 Criteria for Referral to Intake—Delinquency
2.231 Criteria for Taking Juveniles Into Custody—Delinquency
3.11 Jurisdiction
3.112 Jurisdiction Over Noncriminal Misbehavior
3.113 Jurisdiction Over Neglect and Abuse
3.114 Jurisdiction of the Federal Courts Over Delinquency
3.115 Maximum and Minimum Age
3.116 Transfer to Another Court—Delinquency
3.118 Venue
3.143 Criteria for Intake Decisions—Delinquency
3.151 Purpose and Criteria for Detention and Conditioned Release
3.152 Criteria for Detention in Secure Facilities
3.161 Case Processing Time Limits
3.171 Rights of the Parites
3.174 Burden and Level of Proof
3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.1810 Enforcement of Dispositional Orders—Delinquency

3.112 Jurisdiction Over Noncriminal Misbehavior

The jurisdiction of the family court over conduct by a juvenile that would not be designated as criminal if committed by an adult should be limited to:

- **a. A pattern of repeated absences or habitual unauthorized absence from school by a juvenile subject to the compulsory education laws of the state;**
- **b. Repeated unauthorized absences for more than twenty-four hours from the place of residence approved by the juvenile's parents, guardian, or primary caretaker;**
- **c. Repeated disregard for or misuse of lawful parental authority; and**
- **d. Acts of delinquency committed by juveniles below age ten.**

Jurisdiction over such conduct should extend to the juvenile, his/her parents, guardian, or primary caretaker, and any agency or institution with a legal responsibility to provide needed services to the juvenile, parents, guardian, or primary caretaker.

The family court should not exercise its jurisdiction over noncriminal misbehavior unless all available and appropriate noncoercive alternatives to assist the juvenile and his/her family have been exhausted.

Source:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 10.1-10.8 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

The proper scope of jurisdiction over noncriminal misbehavior, i.e., conduct that is unlawful for juveniles but not for adults, is one of the most hotly debated issues in juvenile justice today. Opponents of such jurisdiction, such as the National Council on Crime and Delinquency, argue that:

> The judicial system is simply an inept instrument for resolving intra-family conflicts, and dealing with these cases in that it results in a vast disproportionate draining of time and resources, to the detriment of cases of neglect or abuse or delinquency which are properly there and represent threats to safety which the court must address.
>
> In the great majority of American jurisdictions, status offenders are subject to exactly the same dispositions as minors who commit crimes, including commitment to state training schools . . . A system which allows the same sanctions for parental defiance as for armed robbery—often with only the barest glance at the reasonableness of parental conduct—can only be seen as inept or unfair. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior*, Introduction (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Noncriminal Misbehavior*].

On the other hand, proponents of jurisdiction over noncriminal misbehavior, such as the National Council of Juvenile and Family Court Judges, contend:

> If we remove the status offenses from the juvenile courts, to a great degree we are removing the underpinnings that the law has provided for parents. If a child disobeys, or wants to run off with undesirable friends, he can go to his parents and say, "I'm leaving, what are you going to do about it?" The parent will have little he can do except use his powers of persuasion; and the parents whose children need this type of external support the most, are apt to be the parents who have the least powers of persuasion. I think the public would hesitate to remove the family category status offenses.
>
> I believe that status offenses are among the most serious matters that come before our courts, as serious certainly as car theft and shoplifting and possibly burglary. Status offenses are the tip of the iceberg, or maybe more appropriately, the tip of the volcano. What little we see on the surface: skipping some school, staying out late, dating boys the father doesn't like, looks rather small and harmless. But for these who get as far as the court, there is usually much under the surface. Status offenses are an indication of some serious trouble. That this is the place where we can help, where we can and should provide compulsory help if the family is not willing to seek help. This is the place where we can reduce the crime rates of the future. Because if we can help a child to unravel incorrigibility, absenting, truancies, drinking, then I think maybe we can do much through social work to make happier children, more contented children, better citizens . . . which is maybe what it's all about. Arthur, "Status Offenders Need Help, Too," 26 *Juvenile Justice* 3, 5 (1975).

Although exact figures are not available, the most recent estimates from the National Center of Juvenile Justice indicate that 15 percent of the cases filed in American juvenile and family courts are based on status offenses, more than 66 percent of the noncriminal misbehavior referrals are handled by intake personnel without filing a petition. However, even with this high rate of informal disposition, nearly one-third of the juveniles charged with noncriminal behavior spend time in a secure jail or detention facility before or after adjudication, and approximately 5 percent of those adjudicated are sent to juvenile institutions. D. Smith, T. Finnegan, H. Snyder, and J. Corbett, *Delinquency 1975: United States Estimates of Cases Processed with Juvenile Jurisdiction* (1975). In addition, a disproportionate number of those who are placed in detention or correctional facilities are female.

In recent years, the number and percentage of juveniles confined because of noncriminal misbehavior has declined. This trend is expected to accelerate as a result of the implementation of the Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. Sections 5601, 5633(a)(12) (Supp. 1975) and the increased attention being directed to the issue by the states and national professional and child service organizations. But the basic jurisdictional question remains.

After considering a wide range of views, the National Advisory Committee concluded that although its goal was to obviate the need for court jurisdiction over noncriminal misbehavior by assuring the availability of sufficient services for all families and children, current programs were neither numerous nor effective enough to warrant a recommendation that the family court be stripped of its power to order the provision of services to families when certain situations were shown to exist. It concluded further that although abuses had occurred, the juvenile courts had been able to assist juveniles and their families and to increase the services available in the community.

Although agreeing with that goal, a substantial number of National Advisory Committee members disagreed with the means chosen to achieve it, favoring instead a recommendation for immediate elimination of jurisdiction over noncriminal misbehavior. In support of this position, it was argued that schools, social services departments, and other agencies will not take the initiative for developing alternative means of handling noncriminal misbehavior cases as long as the family court retains jurisdiction; that traditionally girls have been subject to harsher penalties for running away or incorrigibility than boys; and that in practical terms little distinction has been drawn between status offenders and delinquents.

After reviewing the standard's provisions and the bases on which it had been approved, the Standards Advisory Committee as a whole remained unconvinced that elimination of family court jurisdiction over noncriminal misbehavior would induce other public agencies to establish necessary services and programs where few had existed before. It concluded that by recommending that jurisdiction be limited to those cases in which all appropriate noncoercive alternatives have been exhausted, and that by urging that public institutions that have provided, have attempted to provide, or are intended to provide services to juveniles and their families be made parties to noncriminal misbehavior proceedings and subject to the dispositional authority of the court, Standard 3.112, together with Standards 2.222, 2.231, and 3.183, was more likely to generate the alternative programs needed to provide aid and support for troubled families. It concluded further that the narrowed definition of the types of conduct cognizable by the family court; the specific criteria proposed to guide intake, detention, and dispositional decisions; the rights provided juveniles subject to the court's jurisdiction; and the repeated recommendation against placing juveniles accused or adjudicated of having engaged in noncriminal misbehavior in institutional detention or correctional facilities would, if adopted, provide protection against the inequities to which the jurisdiction over noncriminal misbehavior has been subject in the past.

Accordingly, the National Advisory Committee, pursuant to its statutory authority, recommends Standard 3.112 and related provisions as a model that can significantly improve the administration of juvenile justice until such time as family court jurisdiction over noncriminal misbehavior is no longer necessary, even as a last resort. However, in response to the concerns voiced over such jurisdiction, the *National Advisory Committee recommends, in addition, that federal funds should be made available to assist any jurisdiction willing to abolish court jurisdiction over noncriminal misbehavior, to provide necessary services to juveniles and their families on a voluntary basis, and to evaluate the results and impact of this change.*

Specifically, the standard recommends jurisdiction resulting from four types of behavior. Paragraph (a) defines truancy in terms of "a pattern of repeated unauthorized absences or habitual unauthorized absence." It thus seeks to differentiate between the child who occasionally plays hooky, and the child who regularly misses school. Only in the latter instance does the possibility of coercive intervention appear justified. The standard does not set a particular number of unauthorized absences as a threshold, because there appears to be no figure that can accurately demarcate the line between the child who misses an occasional day on "impulse or caprice" and the confirmed dropout, without setting it so high as to preclude intervention until "the underlying cause of that behavior has had a chance to fester and become a grave and possibly unsolvable problem . . ." *Report of the Task Force, supra* at Commentary to Standard 10.5. The term unauthorized absence is intended to refer to absences that have not been consented to by the juvenile's parents, guardian, or custodian.

The inclusion of truancy within the noncriminal misbehavior jurisdiction of the family court is based on the traditional emphasis placed on education—forty-nine states and the District of Columbia have compulsory school attendance laws—and the need in contemporary society for at least basic reading and mathematical skills in order to earn a living and obtain decent food and shelter. Although truancy may be one facet of a larger pattern of anti-social behavior, it may also be the result of unmet physical, mental, or emotional needs; an inability to afford adequate clothing or to pay for books and other fees; family problems; an inability to speak or understand English; or sometimes an inadequate and uninteresting educational program. *See* Children's Defense Fund, *Children Out of School in America* (1974). Most of these problems should be solvable without court intervention. Hence, it is the intent of the standard that the schools take primary responsibility for resolving truancy problems, including counseling the child and family, advising them of the availability of social and financial services, and providing alternative educational programs. Similarly, misbehavior in school that does not constitute a criminal offense should be dealt with by school authorities, not the court. *See* Standard 3.2. Conduct that would be a crime if committed by an adult is cognizable under the family court's delinquency jurisdiction. *See* Standard 3.111.

Truancy is included within the jurisdiction of the juvenile or family courts of thirty-nine states and the District of Columbia. The IJA/ABA Joint Commission recommends that court jurisdiction be invoked as a last resort and limited to developing a plan for supervised attendance. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Schools and Education,* Standard 1.11 (tentative draft, 1977). U.S. Department of Health, Education and Welfare, *The Model Act for Family Courts,* Comment to Section 2(19)(iii) (1975) subsumes such conduct under the rubric of neglect. *See also* Fla. Stat. Ann. Section 39.01(10) (Supp. 1975). National Conference on Commissioners on Uniform State Laws, *The Uniform Juvenile Court Act,* Section 2(4)(i) (1968) places juveniles who are "habitually and without justification truant from school and who are in need of treatment" in a separate "unruly child" class of jurisdiction. R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 77-78, 218 (International Association of Chiefs of Police, 1973) and the Children's Defense Fund, *supra* recommend elimination of court jurisdictions based on truancy. *See also* Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, *Juvenile Justice Standards and Goals,* Standard 11.2 (2nd draft, 1975).

Paragraph (b) delineates the scope of jurisdiction over juveniles who run away from home. A startling number of youths, both male and female, runaway each year. Estimates range up to as many as one million annually, although many of these may be short-term and resolved without outside intervention. *See* U.S. Department of Health, Education and Welfare, *The Incidence and Nature of Runaway Behavior* (1975). The reasons for running away and the response required vary greatly. However, given the magnitude of the problem and the need to provide support for troubled families and to assure that runaways are treated fairly, continuation of family court jurisdiction over runaway behavior appears justified.

The standard recommends that children must be absent from their home or other approved place of residence (e.g., a boarding school, camp, or the home of a friend or relative) without the consent of their parent, guardian, or primary caretaker for twenty-four hours before family court jurisdiction can be invoked. This is to provide an opportunity for the conflict to cool and the juvenile to return or be returned without referral to the court. However, nothing in the standard is intended to prohibit law enforcement officers or child protective services workers from conducting investigations and searches within the 24-hour period and returning the juvenile home or to an authorized runaway shelter. See Standards 2.12, 2.21, 2.241, 2.31, and 2.341.

The standard recommends that a noncriminal misbehavior petition should not be filed when a juvenile has runaway for the first time. As noted in the commentary to the Task Force standard, "very rarely do isolated instances of runaway behavior indicate severe family dysfunction or personal problems." *Report of the Task Force, supra* at Commentary to Standard 10.4. Only after repeated acts of leaving home without permission and the attempted utilization of noncoercive service alternatives should the family court be asked to determine whether the conduct occurred, and, if so, what disposition best serves the interests of the juvenile, the family, and the community. *See* Standards 2.222, 2.231 and 3.144. This approach is in accord with the emphasis in the *Federal Runaway Youth Act* on meeting the needs of runaways and addressing their problems and those of their families outside the law enforcement and juvenile justice system.

The provisions adopted by the IJA/ABA Joint Commission recommend involvement of the family court only if a juvenile's parents refuse to allow their child to return home or if the juvenile and his/her parents cannot agree on an alternative place of residence. *See* IJA/ABA, *Noncriminal Misbehavior, supra* at Standards 3.2 and 5.4. The International Association of Chiefs of Police recommends total elimination of court jurisdiction over runaways. Kobetz and Bosarge, *supra. See also* Wisconsin Council on Criminal Justice, *supra.* The *Model Act for Family Courts, supra* recommends intervention of the family court under its neglect jurisdiction as a last resort. *See also* Fla. Stat. Ann. Section 39.01(10), *supra.* The *Uniform Juvenile Court Act, supra* includes juveniles who have "committed an offense applicable only to a child and who are in need of treatment or rehabilitation" under its special jurisdictional category for "unruly children." All states currently provide for jurisdiction over runaways, either specifically or under the provisions covering incorrigibility or beyond parental control.

Paragraph (c) addresses the type of family conflicts formally brought into court as "incorrigibility" or being beyond parental control. It seeks to narrow those broad labels, requiring that there be repeated disregard for lawful parental authority and, like the other forms of noncriminal behavior, that appropriate noncoercive alternatives have been tried and failed. The provision, following the proposal of the *Report of the Task Force, supra,* would also permit challenges to "unreasonable and pointless parental demands" that are producing serious familial conflict. This would allow juveniles to seek resolution of family problems through established channels rather than through acting out or running away. In trying to determine whether parental demands were reasonable, the judge should consider the overall family situation and whether or not the demands served the purposes of family harmony, discipline, or the child's welfare. The term "repeated" is intended to require some pattern of disregard or misuse of parental authority, not merely a few insignificant, isolated incidents. The IJA/ABA Joint Commission, for the reasons indicated earlier, recommends that jurisdiction over disobedience to parental demands be eliminated. *See* IJA/ABA, *Noncriminal Misbehavior, supra; see also* Kobetz and Bosarge, *supra;* Wisconsin Council on Criminal Justice, *supra.* It is the expectation of these authorities that, in nearly all cases, the services required can and will be available from public and private agencies. As with the other forms of noncriminal misbehavior, the *Model Act for Family Courts, supra* recommends inclusion under neglect, and *the Uniform*

Juvenile Court Act, supra includes habitual disobedience of reasonable and lawful parental demands under a PINS-type, "unruly child" classification. Most states include incorrigibility in one form or another within the jurisdiction of the family court.

The fourth type of noncriminal misbehavior cognizable by the family court is delinquent conduct committed by juveniles under the minimum age of the family court's jurisdiction over delinquency. *See* Standard 3.115.

Paragraph (d) is included in recognition that children under age ten do commit acts that would constitute a crime if committed by an adult, but that "there is little purpose in authorizing delinquency jurisdiction over juveniles who are too young and immature to understand that engaging in certain behavior constitutes a criminal offense." *Report of the Task Force, supra* at Commentary to Standard 10.8. The general practice in the states when juveniles under ten are apprehended for committing what would otherwise be a delinquent offense has been to place the child with a service agency without referral to court or to invoke the court's neglect or noncriminal misbehavior jurisdiction. Children under twelve are rarely adjudicated delinquent because of the difficulty in proving that such a young child is capable of forming the requisite intent, the recognition that such children require treatment not sanction, and the reluctance to further those children's contacts with older delinquents. Unlike the Task Force provision, the standard does not specify that there must be repeated or serious delinquent acts in order to submit the matter to the family court. However, as with the other forms of noncriminal misbehavior, a petition should not be filed unless all appropriate noncoercive services have been refused or have proven ineffective, after a reasonable trial period.

Other commonly found bases for jurisdiction over noncriminal misbehavior were considered but rejected. It was concluded that although there should be authority to intercede when there is substantial and immediate danger to the juvenile's physical safety or when a juvenile is engaging in asocial or dysfunctional behavior resulting from repeated excessive use of alcoholic beverages, and to provide services on a voluntary basis in such circumstances, court jurisdiction is unwarranted unless the behavior described falls within the four situations described in the standard or constitutes a delinquent act, neglect, or abuse. *See* Standards 2.12, 2.131, 3.111, and 3.113. Attempting to predict dangerousness is too uncertain an art to avoid the potential for continuation of the abuses of discretion cited by opponents to status offense jurisdiction. *See* IJA/ABA, *Noncriminal Misbehavior, supra.* Alcohol abuse by adults is increasingly being handled as a medical problem without need of court intervention unless there is a threat to the safety of others, such as when an individual drives while intoxicated. There is no reason why this policy should not extend to juveniles as well. *See* Law Enforcement Assistance Administration, *Diversion of the Public Inebriate from the Criminal Justice System* (1973); *but see Report of the Task Force, supra.* As for curfew violations—another common offense applicable only to juveniles—many communities have been able to cope with the problems that curfew regulations are intended to address without imposing such regulations. Moreover, curfews are subject to highly selective and often arbitrary enforcement. Again, nothing in the standard is intended to preclude return of children to their homes. *See* Standards 2.11 and 2.241. It suggests only that those juveniles should not be subject to adjudication or coercive dispositions. Standards 2.11, *et. seq.* address the circumstances that justify societal intervention into the life of a child and the procedures and safeguards that should apply.

As indicated earlier, the family court's jurisdiction in noncriminal misbehavior cases should extend over the juvenile, his/her parents, guardian, or primary caretaker, and any agency or institution with a legal responsibility to provide services to juveniles and/or their families. The latter would include, for example, the public schools in a truancy matter or a public social service agency to which a family has been referred. The standard is not intended to transform a simple referral to a private agency into a legal obligation to provide services. Hence, the family court's jurisdiction over noncriminal misbehavior would not include private agencies.

The term "all available and appropriate alternatives have been exhausted" in the last paragraph of the standard contemplates identification of the services that are available and determination that those services have been offered to the juvenile and his/her family, and that such services have proven ineffective after a reasonable trial period or have been unreasonably refused. *See* Standards 2.222, 2.321, and 3.144. As noted above, the exhaustion of services provision is intended to apply to each of the forms of conduct included under the noncriminal misbehavior jurisdiction, including commission of delinquent acts by juveniles below age ten.

Related Standards

2.12	Intervention for Noncriminal Misbehavior
2.21	Authority to Intervene (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.241	Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.243	Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.31	Authority to Intervene (Nonlaw Enforcement Agencies)
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.341	Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
2.342	Procedures Following a Decision to Refer to Intake (Nonlaw Enforcement Agencies)
3.11	Jurisdiction
3.111	Jurisdiction Over Delinquency
3.113	Jurisdiction Over Noncriminal Misbehavior
3.143	Criteria for Intake Decisions—Noncriminal Misbehavior

3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
4.21 Training Schools
4.26 Detention Facilities

Prevention Strategies

Focal Point Social Interaction:
Cor. J-2 Alternative Approaches to Juvenile Misconduct
Focal Point Social Institutions:
Cor. F-3 Crisis Intervention
Cor. Ed-3 Alternative Education
Focal Point The Individual:
Cor. F-1 Individual and Family Counseling
Cor. F-3 Protective Services

3.113 Jurisdiction Over Neglect and Abuse

The jurisdiction of the family court over neglect and abuse should incude:

- **a. Juveniles who are unable to provide for themselves and who have no parent, guardian, relative, or other adult with whom they have substantial ties willing and able to provide supervision and care;**
- **b. Juveniles who have suffered or are likely to suffer physical injury inflicted nonaccidentally by their parent, guardian, or primary caretaker, which causes or creates a substantial risk of death, disfigurement, impairment of bodily function, or bodily harm;**
- **c. Juveniles who have been sexually abused by their parents, guardian, primary caretaker, or a member of the household;**
- **d. Juveniles whose physical health is seriously impaired or is likely to be seriously impaired as a result of conditions created by their parents, guardian, or primary caretaker, or by the failure of such persons to provide adequate supervision and protection;**
- **e. Juveniles whose emotional health is seriously impaired and whose parents, guardian, or primary caretaker fail to provide or cooperate with treatment;**
- **f. Juveniles whose physical health is seriously impaired because of the failure of their parents, guardian, or primary caretaker to supply them with adequate food, clothing, shelter or health care, although financially able or offered the means to do so;**
- **g. Juveniles whose physical health has been seriously impaired or is likely to be seriously impaired or whose emotional health has been seriously impaired because their parents have placed them for care or adoption, in violation of the law, with an agency, an institution, a nonrelative, or a person with whom they have no substantial ties;**
- **h. Juveniles who are committing acts of delinquency as a result of pressure from or with the approval of their parents, guardian, or primary caretaker; and**
- **i. Juveniles who parents, guardian, or primary caretaker prevent them from obtaining the education required by law.**

Jurisdiction over neglect and abuse should extend to the juvenile, his/her parents, guardian or primary caretaker, and any agency or institution with a legal responsibility to provide needed services to those persons.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 11.9-11.13, and 11.15 (1976) [hereinafter cited as *Report of the Task Force*]; U.S. Department of Health, Education and Welfare, *Proposed Model Child Protection Act,* Section 4(c)(iii) (draft, 1976); *see also* J. Areen, "Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Abuse and Neglect Cases," 63 *Geo. L. Rev.* 887 (1975); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 2.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*].

Commentary

This standard provides a definition of neglect and abuse for jurisdictional purposes. It is intended to focus attention on specific harms to the child rather than on broadly drawn descriptions of parental behavior. It weighs both the interests of the juvenile in avoiding harm and the interest of the family in avoiding unnecessary state interference in child rearing, but clearly recognizes that the protection of the juvenile is the primary purpose of state intercession. As formulated, the standard does not require a showing of "parental fault."

In a system intended to protect endangered children . . . reliance on formalistic legal concepts is inappropriate . . . Intervention should be a nonpunitive act. The objective of helping parents protect their children will be furthered if intervention does not require that parents be labeled blameworthy or made to feel so. *Report of the Task Force, supra* at Commentary to Standard 11.3.

Moreover, the standard seeks to discourage intervention based solely on the parent's lifestyle, values, or "morals" when the child's physical or emotional health is not impaired or demonstrably threatened and to encourage reliance on public assistance programs of executive agencies rather than on the jurisdiction of the family court when a child's parents, guardian, or primary caretaker are too poor to provide him/her with adequate food, clothing, shelter, health care, or education. The continuity of relationships with parents or parental surrogates is often of critical importance and should not be disrupted unless necessary to protect against the specific harms listed in the standard. *See* J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* (2nd Ed. 1973); J. Bowlby, *Child Care and the Growth of Love* (1965).

It is anticipated that, in many cases, the counseling and other services necessary to protect a child from further harm following submission of a complaint can be provided on a voluntary basis through a referral of the family for services by the intake officer. *See* Standards 3.142 and 3.145. The family court should not exercise its jurisdiction unless it is evident that the available noncoercive alternatives cannot adequately protect the child or the child has been placed in emergency custody. *See* Standards 2.223, 2.233, 2.322, 2.33, 3.112, 3.145, 3.155, and 3.157.

In accordance with these general principles, the standard recommends that the family court should be authorized to assume jurisdiction in order to protect children from any of nine defined types of harm. Paragraph (a), rather than simply listing "abandonment" as a ground for jurisdiction, *see, e.g.*, U.S. Dept. of Health, Education and Welfare, *Model Act for Family Courts*, §2(19). (1975), suggests that unless one of the harms specified in paragraphs (b)-(i) can be demonstrated, it is not necessary to involve the jurisdiction of the family court on behalf of a child who has been entrusted by his/her parents to a relative or other adult to whom the child has formed an attachment and who is willing and able to provide supervision and care. *See Report of the Task Force, supra*, and discussion of paragraph (g), *infra*. Similarly, it suggests that when older juveniles have demonstrated the ability to live on their own, it is not in the interest of the juvenile, the state, and, in most instances, the parents to attempt to intercede on grounds of parental abandonment or neglect. Most states currently provide authority to intervene when a child has been "abandoned," leaving the term to be defined by the courts on a case-by-case basis.

There can be little question that the law should seek to protect children, no less than adults, from being intentionally assaulted or otherwise harmed by others. The major issue is the threshold for intervention. A child should not have to be permanently maimed before assistance is available, but neither should court intervention be authorized when the risk of harm is highly speculative. *See Report of the Task Force, supra;* M. Wald, "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards," 27 *Stan L. Rev.* 985, 1012-1013 (1975). Under paragraph (b), the family court's jurisdiction would include children who have suffered some form of bodily harm as a result of a deliberate act of their parents, guardian, or primary caretaker. Intent to inflict the particular injury that the child has suffered need not be proven, but there should be evidence that the child was not struck, burned, or otherwise injured accidentally. The term "primary caretaker" is used here and throughout these standards to denote a person other than child's parents or public or private agency, institution, or organization that is providing or has taken on the responsibility for providing care and supervision of a child without having been designated as the child's legal guardian. Paragraph (b) does not require that the injury to the child be serious because of the danger presented by the repetitive nature of child abuse. *See Proposed Model Child Protection Act, supra* at Section 4(c); *but see Report of the Task Force, supra;* IJA/ABA, *Neglect, supra*. The term "impairment of bodily function" is intended to include a child's failure to thrive."

Paragraph (c) addresses the problem of sexual abuse. Like physical abuse and abandonment, it is clear that incest and other forms of sexual abuse are matters warranting judicial intervention. In the past, when such conduct has been reported, it has often been treated as a criminal offense. The focus on assisting the family rather than punishing an offender, the availability of counseling and other services, and the fact that the parental sexual misconduct is often in conjunction with other forms of abuse or neglect, Y. Tormes, *Child Victims of Incest* (1968), and S. Weinberg, *Incest Behavior* (1955), make it more appropriate to handle such matters as neglect and abuse cases, even though under Standards 3.11 and 3.117, intra-family criminal offenses could be heard in the family court.

Paragraph (d) defines the most commonly used basis for jurisdiction—serious impairment of a juvenile's health because of the failure of the juvenile's parents, guardian, or primary caretaker to provide adequate protection or supervision. Unlike many current statutes, the definition requires that harm or a threat of imminent harm be shown in order for the matter to be cognizable in the family court. *See Report of the Task Force, supra;* IJA/ABA, *Neglect, supra;* Areen, *supra; but see Model Child Protection Act, supra.* As noted above, this is intended to discourage intervention on the basis of the family's lifestyle, values, or poverty when the child's health is not endangered. The paragraph encompasses situations such as the young child who is regularly left unattended or is allowed to roam the streets alone at night, the child allowed to play regularly in a room with an exposed and accessible high voltage wire or a defective heater, or the child who is repeatedly abused by a sibling or a visitor to the home. *See Report of the Task Force, supra* at Commentary to Standard 11.11. When a parent is unable to correct the dangerous condition or provide supervision for financial reasons, the case should ordinarily be referred to the appropriate public or private agency for provision of the necessary services on a voluntary basis and the complaint dismissed, unless no measure short of temporary emergency custody will be sufficient to protect the child until the condition is corrected or the homemaker or other services provided. *See* Standards 3.145 and 3.154. Because the hazards of prediction are greater in the situations covered by this paragraph than in the intentional abuse cases covered by paragraph (b), "serious" impairment of the child's physical health, or a substantial risk thereof, is required before the jurisdiction of the family court can be invoked. However, this limitation is not intended to prohibit the provision of services on a voluntary basis to assist the family. *See* Standard 2.13.

Paragraph (e) addresses the highly complex and uncertain issue of emotional neglect. Many current neglect statutes have been criticized for failing to protect the mental or emotional health of children in the same manner as their physical health. *See Report of the Task Force, supra* at Commentary to Standard 11.12. However, there is little agreement on the definition of emotional neglect, even among mental health professionals. Paragraph (e) draws together elements from the Areen, *supra; Report of the Task Force, supra;* and IJA/ABA, *Neglect, supra,* proposals. Like Professor Areen, the National Advisory Committee concluded that the state of the art of child psychology is not yet sufficient to provide a set of precise, reliable, and inclusive symptoms that can be fashioned into a statutory definition of emotional neglect or abuse. *See* Areen, *supra* at 933; *but see Report of the Task Force, supra;* IJA/ABA, *Neglect, supra;* and *Draft Model Child Protection Act, supra* at Section 4(g). However, unlike the Areen proposal, *supra* at 933, the paragraph does not require determination that the parents are the cause of their child's emotional problems. Rather, it follows the recommendation of the Task Force that the family court should be authorized to take cognizance of the matter only when the parents refuse to allow their child to receive treatment or are otherwise unwilling "to make meaningful efforts to resolve the problem." *Report of the Task Force, supra* at Commentary to Standard 11.12. Paragraph (e) also limits jurisdiction to situations in which actual harm has occurred. *Cf.* Paragraphs (b), (d), and (g).

> . . . [I]t is particularly essential that intervention with regard to emotional neglect be premised solely on damage to the child. Without actual damage it is extremely difficult both to predict the likely future development of the child and to assess the impact of intervention. At a minimum, sound predictions would require extensive observations of the child and family. At present we lack the resources to undertake such evaluations. Even if there were adequate resources, our knowledge of child development is still too limited to insure sound long-term predictions. Wald, *supra* at 1017.

A few states—e.g., Florida, South Carolina, and Utah—have statutes authorizing judicial intervention for failure of a child's parents to provide psychiatric help. Several others have statutes specifically addressing emotional neglect in other ways.

Paragraph (f) is based on Section 4(c)(iii) of the *Draft Model Child Protection Act, supra.* It is intended to cover situations in which a child's health is endangered because his/her parents, guardian, or primary caretaker fails to provide him/her with the basic essentials of life, although financially able or given the means to do so. When the family is unable to provide food, shelter, clothing, or health care for financial reasons, the necessary services or funds should be provided through social service or welfare agencies without referral to the family court. Most states provide for jurisdiction in cases of destitution or make no exception in "failure to provide" statutes for lack of financial resources. As in paragraph (d), this provision urges that failure to provide should not be subject to the jurisdiction of the family court unless the child has been seriously harmed, in order to discourage disruption of family life because of the parent's lifestyle or values and to provide some guidance to judges asked to order an operation or other medical treatment for children whose parents object on religious grounds. *See Report of the Task Force, supra;* IJA/ABA, *Neglect, supra;* E. Browne and L. Penny, *The Nondelinquent Child in Juvenile Court: A Digest of Case Law*, 9-13 (National Council of Juvenile Court Judges, 1974); Note, "Court Ordered Nonemergency Medical Care for Infants," 18 *Cleveland-Marshall Law Review* 296 (1969). Like paragraph (e), the provision limits court jurisdiction to instances in which the child's health has actually been impaired.

Paragraph (g) is included in recognition of the large number of children placed for adoption each year with unlicensed agencies or voluntarily relinquished to institutions or persons with whom they have no substantial ties. When such placement results in serious physical or emotional harm to the child or the threat of serious physical harm, court action to protect the child appears warranted. The provision is not intended to include voluntary placements with a relative or with a person with whom the child has formed a close attachment, although neglect or abuse of the child by such persons would be included under the other paragraph of this standard. A number of states currently include placement of a child in unlicensed facilities as a ground for declaring the child neglected or abused. Both the *Model Act for Family Courts, supra* at Section 2 (19)(iv), and the *Uniform Juvenile Court Act*, Section 2(5)(iii) (National Conference of Commissioners on Uniform State Laws, 1968) include "children placed for care and adoption in violation of the law" within the jurisdiction over the neglect or abuse, although neither requires evidence of harm to the child before such jurisdiction can be exercised.

Paragraph (h) provides for family court jurisdiction in instances in which children are actively encouraged to engage in delinquent conduct by their parents, guardian, or primary caretaker. Like the *Report of the Task Force, supra,* and IJA/ABA, *Neglect, supra* provisions from which it is drawn, the paragraph is not intended to include situations in which a juvenile is believed to have committed the delinquent acts because of lack of parental supervision or one of the other forms of neglect or abuse. *See Report of the Task Force, supra* at Commentary to Standard 11.15. As in sexual abuse cases, the focus of and services available through the family court's jurisdiction over neglect and abuse appears to be a more appropriate means of dealing with the problem of encouraged delinquency than prosecuting the parent or parental surrogate in a criminal proceeding.

Failure to provide a child with the education required by law is often grouped together with failure to provide adequate clothing, shelter, food, or health care. *See* paragraph (f). It is listed separately because it protects the child's interest in receiving at least an adequate education rather than the child's physical health. Hence, children alleged to have been prevented from obtaining the education required by law should not be placed in emergency custody. *See* Standards 2.233, 2.33, 3.154, and 3.157. The standard is not intended to affect the rights of parents to limit, to some extent, their child's education or to secure an alternative form of education for religious reasons. *See Yoder v. Wisconsin,* 406 U.S. 205 (1972). The term "required by law" is intended to refer to the compulsory school attendance laws in force in all but one state. For the reasons discussed in connection with paragraphs (c) and (h), utilization of the court's jurisdiction over neglect appears to be a better means of protecting a juvenile's opportunity for an education than seeking to impose the criminal penalties contained in many compulsory school attendance laws.

The final paragraph of the standard recommends that the family court's jurisdiction in neglect and abuse cases, like that in noncriminal misbehavior cases, should extend over public agencies with a legal responsibility to provide services to juveniles and their families, as well as over the juvenile and parent, guardian, or primary caretaker named in the complaint or petition. This authority is necessary when the public agencies are alleged to have allowed children in their charge to be neglected or abused, *see, e.g., New York State Association for Retarded Children v. Rockefeller*, 357 F. Supp. 752 (E.D.N.Y. 1973); *Wyatt v. Stickney*, 344 F. Supp. 387 (M.D. Ala. 1972); *Nelson v. Heyne*, 1351 F. Supp. 451 (N.D. Ind. 1972); *Inmates of Boy's Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972), to make certain that services ordered by the court are actually provided, and to assure that noncooperation with those services is brought to the court's attention. *See* Standards 1.126, 3.184, 3.189, 3.1812, and 3.1813.

Related Standards

2.13 Intervention to Protect Against Harm
2.223 Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.233 Criteria for Taking Juveniles into Emergency Protective Custody (Law Enforcement Agencies)
2.244 Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245 Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.322 Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.33 Criteria for Taking Juveniles into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.343 Procedures Upon Taking a Juvenile into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344 Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.11 Jurisdiction
3.111 Jurisdiction Over Delinquency
3.112 Jurisdiction Over Noncriminal Misbehavior
3.117 Transfer of Jurisdiction—Intrafamily Criminal Offense, Contributing to the Delinquency of a Minor
3.145 Criteria for Intake Decisions—Neglect and Abuse
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.157 Initial Review of Emergency Custody Decisions
3.184 Dispositional Alternatives and Criteria—Neglect and Abuse
3.185 Criteria for Termination of Parental Rights
3.1812 Review of Dispositional Orders—Neglect and Abuse
3.1813 Enforcement of Dispositional Orders—Neglect and Abuse

3.114 Jurisdiction of the Federal Courts Over Delinquency

The jurisdiction of the United States District Courts over offenses commited by juveniles that would be designated as criminal if committed by an adult should be reduced to the greatest extent possible.

Source:

None of the sets of standards or model legislation reviewed address the appropriate scope of federal jurisdiction over delinquency. *See generally* 18 U.S.C. Section 5032 (Supp. 1979).

Commentary

Over the past ten years, the number of delinquency cases adjudicated by the U.S. District Courts has steadily declined. Between July 1977 and June 1978, the U.S. District Courts heard a total of only ninety-five cases under the *Federal Juvenile Delinquency Act,* 18 U.S.C. Section 5031 *et. seq.* (Supp. 1979), and between October 1977 and September 1978, federal correctional facilities housed only seventeen persons adjudicated under that act. These figures demonstrate a substantial reduction over the past decade. As a result, few if any U.S. District Court judges now try delinquency cases on a regular basis or are selected to hear such cases under the criteria recommended in Standard 3.123; few federal probation officers have an opportunity to become familiar with the problems of juveniles adjudicated delinquent; correctional programs for juveniles are limited; and the federal correctional facilities to which adjudicated delinquents are sent are often far from the juvenile's home and family and house adult as well as juvenile offenders. There will inevitably remain a handful of juvenile offenders who will have to be tried in the federal courts because the states lack concurrent jurisdiction over the offense (e.g., violations of immigration, currency counterfeiting, and federal tax laws) or over the place where the offense was committed (e.g., sky-jacking or crimes committed on the high seas). This standard urges that these cases continue to be held to a minimum. Among the ways in which this could be achieved is to strengthen the longstanding policy in favor of deferral of jurisdiction to the states embodied in 18 U.S.C. 5032 (Supp. 1979), by deleting the provision in that section permitting federal prosecution when a state refuses to assume jurisdiction. In addition, in states which have not exercised the option provided in Sections 6 and 7 of Public Law 83-20 (1953) to assume jurisdiction over criminal offenses and civil causes of action arising on Indian reservations, increasing reliance can be placed on deferral of delinquency cases to the tribal courts. Such reliance should be accompanied by the programs, training, and other resources necessary to assist the tribal courts to administer effective and equitable justice and enable the tribes to provide or purchase the necessary services. A number of such programs are already under way. Furthermore, jurisdiction over an act of delinquency committed on military installations could be ceded back to those states that did not retain such jurisdiction when the land for the installation was transferred to the Federal Government. Because the number of *Federal Juvenile Delinquency Act* cases is already small, these measures should not excessively burden the family courts of most jurisdictions.

In those cases in which the federal courts must retain jurisdiction over delinquent conduct, correctional services, when required, should continue to be obtained through contracts with state and local agencies or private organizations. Authority for procurement of such services is already provided in 18 U.S.C. Section 5040 (Supp. 1979). Dispositional decisions should be made in accordance with the procedures recommended in Standards 3.181 *et.seq.* If a custodial alternative is selected, the custodial facility in which the juvenile is placed should ordinarily be as close to the juvenile's place of residence as possible. The National Advisory Committee recommends that the operation of correctional facilities and programs by the Federal Government for juveniles adjudicated delinquent by the U.S. District Courts should be discontinued. *See* Standard 4.12.

This standard is not intended as criticism of the performance of the U.S. District Courts or the Federal Bureau of Prisons. Rather, it arises from the recognition that the administration of juvenile justice is and should continue to be a state and local responsibility and, therefore, that jurisdiction over delinquency, noncriminal misbehavior, and neglect and abuse should be vested in state and local courts. As was noted by the District of Columbia Court of Appeals:

> As between the local community and the federal government one would hardly say that juvenile delinquency is primarily a federal concern because it is evident it is at bottom a responsibility of the community. If we have, as we do to a distressing degree, juvenile delinquency, they are not either local delinquents or federal delinquents—they are juvenile delinquents and they are the problem of the local

community primarily, barring a controlling statutory provision to the contrary. *District of Columbia v. P.L.M.*, 325 A.2d at 600,601 (DCCA 1976).

This standard recommends reduction of such statutory bars to a minimum.

Related Standards

- 1.131 Organization and Coordination of the Federal Juvenile Service System
- 3.11 Jurisdiction
- 3.111 Jurisdiction Over Delinquency
- 4.11 Role of the State
- 4.12 Role of the Federal Government

3.115 Maximum and Minimum Age

The jurisdiction of the family court over delinquency should include any person charged with an offense that allegedly occurred on or after that person's tenth birthday and prior to that person's eighteenth birthday, and for which the statute of limitations, applicable if the offense had been committed by an adult, has not run. The dispositional authority of the family court over an adjudged delinquent should not extend beyond that person's twenty-first birthday.

The jurisdiction of the family court over noncriminal misbehavior should only be invoked with regard to persons under the age of majority established by statute. The dispositional authority of the family court in matters under its noncriminal misbehavior jurisdiction should not extend beyond the date on which the person with regard to whom that jurisdiction was invoked attains the statutory age of majority.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 9.2-9.4, 10.8, and 14.14 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard sets a maximum age limit on the jurisdiction of the family court over persons charged with acts of delinquency or noncriminal misbehavior, a minimum age below which a child may not be charged as a delinquent, and a limit on the duration of the family court's dispositional authority.

Establishing a maximum jurisdictional age is a somewhat arbitrary decision because the age at which individuals mature varies. However, because there appears to be little agreement on methods for actually measuring maturity, specification of a chronological age remains the most viable approach. Eighteen was selected as the age at which a person accused of committing an act that violates the criminal law will be handled as an adult offender rather than as an alleged delinquent, because it corresponds to the age at which most young persons complete their high school education, begin to loosen their family ties, and become eligible for such adult rights and responsibilities as voting and military service.

The date of the alleged conduct is designated as the date controlling family court jurisdiction. This follows the practice in a majority of states and is intended to remove the incentive to delay prosecution of a case until after a juvenile's eighteenth birthday so that he/she can be tried as an adult. Standard 3.116 provides guidelines for transfer to a court of general criminal jurisdiction of accused delinquents, sixteen and over, for whom dispositions by the family court would be inappropriate.

The statute of limitations applicable in delinquency cases should be the same as that applicable in adult criminal proceedings. *See Report of the Task Force, supra.* The IJA/ABA Joint Commission has recommended special statutes of limitations for delinquency matters. The rationale for such special provisions is that an isolated incident more than three years old has little bearing on a child's need for treatment or punishment and that if there have been no subsequent acts of delinquency, society's interest in preventing future criminal conduct can probably be best served by leaving the child alone. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Waiver of Juvenile Court Jurisdiction,* Standard 1.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Waiver*]. However, the screening and referral procedures recommended in Standards 2.221, and 3.141-3.147 accomplish the same objectives more simply and directly.

The maximum age for jurisdiction in noncriminal misbehavior cases is set at the statutory age of majority. Because the conduct included under the rubric of noncriminal misbehavior is not proscribed for adults, the standard recommends that both adjudicatory and dispositional jurisdiction should terminate at majority and makes no provision for continuing jurisdiction over noncriminal misbehavior. Thus, a juvenile who runs away or is truant cannot be subject to court action for those acts after he/she reaches the age of majority. Similarly a dispositional order, rendered in a proceeding initiated by a minor for repeated abuse of authority, would automatically terminate when the minor reached majority. In contrast, juveniles committing a delinquent act before their eighteenth birthday but not apprehended until after that birthday would still be subject to the family court's delinquency jurisdiction, although they could be transferred to a court of general criminal jurisdiction under Standard 3.116. Forty-one states set the beginning of adult status at eighteen years of age, three at nineteen, and the remaining six at the traditional age of twenty-one, although many states place separate age restrictions on the availability of alcoholic beverages, eligibility for public office, and the ability to convey land. H.W. Beaser, *The Legal Status of Runaways,* 317-318 (1975).

The standard endorses the minimum age of ten for delinquency cases recommended by the *Report of the Task Force, supra,* and the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Delinquency and Sanctions,* Standard 2.1 (draft, 1977). The minimum age limit recognizes that the number of children under ten years of age committing criminal acts is relatively small, that there is serious question about the ability of most children age nine or below to understand the proceedings or his/her actions, and that delinquency cases involving young children are likely to be family problems which can be addressed more effectively through the provision of counseling and services, either voluntarily or, when necessary, through the family court's jurisdiction over noncriminal misbehavior or neglect and abuse. *See* Standards 3.112 and 3.113. Accordingly, no minimum age is set for these other types of jurisdictions. The vast majority of states either have no set policy or follow the common law presumption that children under the age of seven are not capable of understanding the consequence of their behavior and therefore cannot be charged with a crime or delinquency. Two states have statutes setting the minimum age at seven and four states set the minimum at ten.

Finally, the standard adopts twenty-one years as the maximum age for the exercise of continuing jurisdiction over an adjudicated delinquent. It thus follows the prevailing practice. The purpose of providing continuing jurisdiction is to relieve the pressure that would otherwise exist to transfer to adult court large numbers of cases involving juveniles just under the maximum jurisdictional age. Dispositions extending beyond a person's eighteenth birthday would still be subject to the statutory durational limits established in conjunction with Standard 3.181. As noted above, dispositions in noncriminal misbehavior cases may not extend beyond the date on which the juvenile to whom the petition refers reaches majority. In delinquency cases, the U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 9 (1975) specifies age nineteen unless terminated prior thereto. The IJA/ABA Joint Commission recommends that jurisdiction continue until eighteen if the dispositional order is entered before age fifteen, and up to a maximum of three years if the order is entered between the ages of fifteen and eighteen. IJA/ABA, *Waiver, supra.*

Related Standards

3.111	Jurisdiction Over Delinquency
3.112	Jurisdiction Over Noncriminal Misbehavior
3.113	Jurisdiction Over Neglect and Abuse
3.116	Transfer to Another Court—Delinquency
3.181	Duration of Disposition and Type of Sanction—Delinquency

3.116 Transfer to Another Court—Delinquency

The family court should have the authority to transfer a juvenile charged with committing a delinquency offense to a court of general criminal jurisdiction if:

- **a. The juvenile is at least age sixteen;**
- **b. There is probable cause to believe that the juvenile committed the act alleged in the delinquency petition;**
- **c. There is probable cause to believe that the act alleged in the delinquency petition is of a heinous or aggravated nature, or that the juvenile has committed repeated serious delinquency offenses; and**
- **d. There is clear and convincing evidence that the juvenile is not amenable to treatment by the family court because of the seriousness of the alleged conduct, the juvenile's record of prior adjudicated offenses, and the inefficacy of each of the dispositions available to the family court.**

This authority should not be exercised unless there has been a full and fair hearing at which the juvenile has been accorded all essential due process safeguards.

Before ordering transfer, the court should state, on the record, the basis for its finding that the juvenile could not be rehabilitated through any of the dispositions available to the family court.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 9.5 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Waiver of Juvenile Court Jurisdiction,* Standard 2.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Waiver*].

Commentary

The President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 25 (1967) termed transfer of accused delinquents to adult criminal courts, "a necessary evil, imperfect but not substantially more so than its alternatives." Waiver of jurisdiction in cases involving juveniles for whom the specialized services and programs available to the family court are inappropriate, functions as a safety valve to relieve the pressure to reduce the maximum age of family court jurisdiction and to facilitiate the provision of services to those juveniles who appear more likely to respond.

This standard, following the lead of the *Report of the Task Force, supra,* and *United States v. Kent,* 383 U.S. 541 (1966), recommends criteria to regulate the operation of this safety valve to assure that those juveniles for whom treatment as an adult offender is appropriate are transferred and that those for whom stigmatization as a convicted felon is unnecessary remain under family court jurisdiction.

The first criterion is that juveniles under age sixteen should remain under the jurisdiction of the family court. This is in accord with the recommendations of most recent standards and models and is the practice in about a quarter of the states. *See, e.g., Report of the Task Force, supra;* IJA/ABA, *Waiver, supra;* President's Commission, *supra;* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 31 (1975); *Uniform Juvenile Court Act,* Section 34 (National Conference of Commissioners on Uniform State Laws, 1968). No matter what age is set, there will always be a few juvenile offenders for whom transfer may be appropriate. Although many serious crimes are committed by juveniles age fifteen and under, it is anticipated that the number of cases in which transfer of such juveniles would be proper under the other criteria listed in the standard will be minimal.

The standard further recommends that no juvenile be transferred unless it has been determined that there is probable cause to believe that a delinquent act has been committed and that the juvenile committed it. *See, e.g., Report of the Task Force, supra;* IJA/ABA, *Waiver, supra; Uniform Juvenile Court Act, supra; but see Model Act for Family Courts, supra.* About half the states with statutory provisions on waiver include such a probable cause requirement. A new probable cause determination regarding the juvenile's involvement in the offense is not necessary if such a determination has been made during a detention hearing or on request of the respondent following the filing of a delinquency petition. *See* Standards 3.155 and 3.165.

However, in most cases, there will still need to be a determination regarding the seriousness of the conduct or the juvenile's prior record of serious felonies. The standard endorses the Task Force provision that a delinquent act must be shown to be of a heinous or aggravating nature or part of a pattern of serious offenses committed by the juvenile. The term "felony" is insufficient to convey the degree of seriousness required for transfer and although linking waiver to the classification scheme used for dispositional purposes may be one method of implementing the standard, *see* IJA/ABA, *Waiver, supra;* and Standard 3.181, the mere citation of a particular class of felonies still does not necessarily address the nature and circumstances of the particular act in question. Between a quarter and a third of the states require that the delinquent act be the equivalent of a felony before a juvenile may be transferred. *The Model Act for Family Courts, supra* recommends consideration of the "nature" of the offense and the juvenile's prior record in determining the "prospects for rehabilitation." *The Uniform Juvenile Court Act, supra* does not.

The fourth criteria focuses directly on the issue of the juvenile's amenability to treatment. The standard endorses the position adopted by the IJA/ABA Joint Commission that the family court judge must determine that there is clear and convincing evidence that a juvenile, because of the nature of the alleged offense and his/her response to the dispositions imposed for prior offenses, is unlikely to respond to any of the dispositions available to the family court. In making this decision the judge should review each of the available types of dispositional alternatives. The Task Force standard does not specify the level of proof, but otherwise agrees in concept with the IJA/ABA Joint Commission proposal.

Kent instructs that juveniles subject to a transfer proceeding are entitled to a hearing, to counsel, to "access by counsel to the social records and probation or similar reports which presumably are considered by the court, and to a statement of reasons for the juvenile court's decision." *Id.* 383 U.S. at 557. This holding was raised to constitutional proportions by *In re Gault,* 387 U.S. 1 (1967). The reference in the standard to all essential due process safeguards is intended to go beyond *Kent* and to be read in conjunction with Standard 3.171, which recommends that accused delinquents should be entitled to notice, to be present at all proceedings, to compel the attendance of witnesses, to present evidence and cross-examine witnesses, to an impartial decision maker, to the right against self-incrimination, and to have a verbatim record made of the proceeding.

The explicit statement of the facts and reasons underlying the transfer decision, which is called for in the final paragraph, follows *Kent* and is part of the effort throughout these standards to regularize the exercise of discretionary authority. *See, e.g.,* Standards 3.147, 3.155-3.157, and 3.188. Although the transfer decision can probably never be a "scientific evaluation," President's Commission, *supra,* the enumeration of specific criteria and the explanation of the basis for the transfer decision in terms of those criteria should facilitate review and promote understanding of and consistency in the transfer process.

Related Standards

3.111 Jurisdiction Over Delinquency
3.117 Transfer of Jurisdiction—Intra-family Criminal Offense, Contributing to the Delinquency of a Minor
3.182 Criteria for Dispositional Decisions—Delinquency

3.117 Transfer of Jurisdiction—Intra-Family Criminal Offense, Contributing to the Delinquency of a Minor

The family court should have the authority to transfer to a court of general criminal jurisdiction, an adult charged with an intra-family criminal offense or contributing to the delinquency of a minor, when there is a finding, based upon clear and convincing evidence that the services available to the family court are inappropriate:

a. Because the family unit does not require such services;
b. Because of the seriousness of the alleged conduct; or
c. Because of the accused's record of prior offenses.

Sources:

No other standards-setting group addresses this issue other than to call for jurisdiction over intra-family offenses. The procedures are based on Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Waiver of Juvenile Court Jurisdiction,* Standard 2.2 (tentative draft, 1977).

Commentary

Jurisdiction is provided over intra-family offenses and contributing to the delinquency of a minor because of the counseling and other services familiar to and available through the family court, which can be utilized to assist the family and avoid recurrences of the unlawful behavior. Although under Standards 3.11 and 3.121, the family court, as a division of the highest court of general jurisdiction, would have authority to try a criminal matter and upon conviction to impose a sentence, transfer to a division that serves as a court of general criminal jurisdiction is recommended when such services are unnecessary or are inappropriate because of the nature of the offense, e.g., homicide, or because the defendant's prior record indicates that counseling would have little effect. It is intended that any criminal conduct in which both the alleged perpetrator and the victim are members of the same household or closely knit family group should be designated as an intra-family offense. Limiting intra-family offenses to certain enumerated crimes introduces unnecessary complexity and inducements to negotiate over the charge. *See* Note, 45 *New York U.L. Rev.* 385 (1970).

It is anticipated that the procedures and time limits applicable to criminal proceedings will apply to intra-family offense and contributing to the delinquency of a minor cases, but that such cases will be reviewed by the intake unit in a manner similar to that described in Standards 3.142-3.147, at an early stage of the criminal process, in order to determine whether referral to services would be appropriate.

Related Standards

3.11	Jurisdiction
3.111	Jurisdiction—Delinquency
3.116	Transfer to Another Court—Delinquency

3.118 Venue

Delinquency, noncriminal misbehavior, and neglect and abuse cases should be adjudicated in the jurisdiction where the conduct from which the case arose is alleged to have occurred.

Upon motion of any party prior to the adjudication hearing, the court should transfer the case to a family court in another convenient location if it finds there is a reasonable likelihood that a fair and impartial adjudication cannot be had in the jurisdiction in which the case is then pending, or if such a transfer would be in the interest of justice.

In addition, the family court should be authorized upon motion of any party to transfer a case after adjudication to the family court in the jurisdiction in which the juvenile or his/her family resides for determination of the appropriate disposition and the enforcement thereof.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 9.6 (1976); *Uniform Rules of Criminal Procedure,* Section 462 (National Conference of Commissioners on Uniform State Laws, 1974).

Commentary

This standard sets forth the principles governing the place of adjudication for delinquency, noncriminal misbehavior, and neglect or abuse proceedings. It recommends that cases be heard in the jurisdiction in which the underlying conduct occurred, because the witnesses for both the state and the respondent are more likely to be available in the place in which the alleged offense, conduct, neglect, or abuse took place.

This is consistent with the requirement of the Sixth Amendment to the U.S. Constitution that defendants in criminal cases be tried in the jurisdiction "wherein the crime shall have been committed," and the current practice in a majority of the states in delinquency cases.

However, the standard provides a liberal change of venue provision taken in part from the Uniform Rules of Criminal Procedure. It authorizes transfer of the proceedings to a family court in a location convenient to the parties upon a showing that there is a "reasonable likelihood" that the matter could not be adjudicated fairly or that a transfer would be in the interests of justice. This is intended to include the inability of a party to present significant facts or witnesses in the original jurisdiction as well as such factors as prejudicial publicity.

The judge is required to be the arbiter between the possible competing interests of the parties. No special right of consent is accorded the juvenile because a transfer from the place of occurrence to the place of residence could be used to prejudice the state as well as to benefit the juvenile. *But see* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 11 (1975). Such special provisions are usually intended to facilitate dispositions in the juvenile's home jurisdiction. To accommodate this need, the standard provides that cases may be transferred to the home jurisdiction following adjudication for both determination and enforcement of the disposition on the request of any of the parties. Article VII of the Interstate Compact on Juveniles requires the adjudicating judge to determine the disposition. However, because the family court judge in the home jurisdiction is more likely to be familiar with the programs and services available in that jurisdiction, and in light of the provisions in Standards 3.181-3.184 promoting increased consistency in dispositional decisions, it appears more appropriate to allow the dispositional decisions to be made in the home jurisdiction. Obviously, information concerning seriousness and circumstances of the conduct on which the adjudication was based and other information essential for making the dispositional decision will have to be transferred along with the case. *See* Standards 1.532, 3.186, and 3.187.

Related Standards

3.111	Jurisdiction Over Delinquency
3.112	Jurisdiction Over Noncriminal Behavior
3.113	Jurisdiction Over Neglect and Abuse
3.188	Dispositional Hearings

3.12 Court Organization

3.121 Relationship to Other Courts

The family court should be a division of the highest court of general jurisdiction, with the full jurisdictional authority and range of dispositional, review, and inherent powers enjoyed by that court.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 8.1 (1976); *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Court Organization and Administration,* Standard 1.00 (tentative draft, 1977); National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* Section 14.1 (1973).

Commentary

This standard endorses the position taken by all recent national standards-setting efforts that the court charged with jurisdiction over juvenile or family matters be an equal part of the highest court of general jurisdiction. *See* in addition to the source materials, U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Comment to Section 3 (1975); National Conference of Commissioners for Uniform State Laws, *Uniform Juvenile Court Act,* Comment to Section 2(9) (1968). Although the standard is phrased in terms of the family court structure recommended in Standard 3.11, it is not intended to discourage a state retaining the traditional scope of juvenile court jurisdiction from making the juvenile court a division of its highest trial court if the juvenile court does not already enjoy that status.

In addition to the specific powers recommended in these standards, family courts should have the same express and inherent authority accorded other divisions, including the power to sentence adults to the full range of penalties provided by the state criminal code, *see* Standard 3.117; to review agency rules, procedures, and actions; to grant appropriate writs; and to order appropriate services for the child or family.

The aim of the standard is to assure that the quality of justice offered juveniles is comparable to that available in adult civil or criminal matters and to promote economy and efficiency in court administration. It is anticipated that as a division of the highest court of general jurisdiction, additional resources will be available to the family court. It is further anticipated that the enhanced prestige of this status, together with the recommendations regarding judicial tenure and qualifications in Standards 3.122 and 3.123, will put to rest the stigma of the "kiddie court" that judges, prosecutors, and defense attorneys must avoid entirely or escape from as quickly as possible.

More than a third of the states and the District of Columbia include the juvenile or family court as a division of the general trial court and six states provide for separate juvenile courts at the equivalent jurisdictional level. In twelve additional states, some juvenile matters are heard at the general trial level (usually in the larger population centers), while the rest are handled by lower court judges. Task Force on Standards and Goals for Juvenile Justice and Delinquency Prevention, *Comparative Analysis of Standards and State Practices: Court Structure, Judicial and Nonjudicial Personnel and Juvenile Records* 7 (1975).

Related Standards

3.11	Jurisdiction
3.122	Tenure of Family Court Judges
3.123	Judicial Qualifications and Selection
3.124	Use of Quasi-Judicial Decision Makers
3.125	Employment of a Court Administrator

3.122 Tenure of Family Court Judges

Assignments to the family court should be for a two-year term. Judges in a multiple-judge jurisdiction should normally serve no more than two consecutive terms on the family court. However, the presiding judge of the highest court of general jurisdiction should have discretion to appoint an incumbent family court judge to additional consecutive terms when that judge has demonstrated exceptional competence while serving on the family court and retains a keen interest in the needs and problems of juveniles and in continuing to serve as a family court judge.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, Standards Relating to Court Structure, Standard 2.00 (draft, 1977) [hereinafter cited as IJA/ABA, *Court Structure*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 8.4 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard attempts to strike a balance between conflicting policy positions. On the one hand, there is the position adopted by *Report of the Task Force, supra,* that judges should be permanently assigned to the family court, subject to removal for unsuitability or reassignment on request. The Task Force concluded that its policy would provide adequate time for a new judge to develop specialized knowledge and community-specific expertise in juvenile and family matters, encourage only those truly interested in the family court to offer their services, and allow family court judges to become more effective advocates in the community for developing needed services for families and children. *Report of the Task Force, supra.*

On the other hand, the IJA/ABA Joint Commission concluded that assignments to the family court division should be rotated among the judges of the highest court of general jurisdiction with each serving no more than two years in succession. It was argued, that relatively frequent rotation was needed to avoid the phenomenon of judges who regard the family court as a personal fief and who overly personalize the administration of juvenile justice, conforming their decisions more to their personal philosophies than to objective standards of law. Such a policy would also encourage the infusion into the juvenile justice system of fresh insights based on the rotating judges' broad legal expertise.

Standard 3.122 recognizes that it may take as much as one year for a family court judge to become acclimatized and fully cognizant of all the available programs and services. Hence, a two-year minimum term is recommended. It recognizes further that exceptionally competent and interested judges should be allowed to serve more than four years in succession on the family court bench, but that periodic rotation of judges can strengthen all divisions of the highest court of general jurisdiction and help to avoid the dangers of both over personalization or routinization of the administration of juvenile justice. Accordingly, the standard recommends that the presiding judge should be authorized to make exceptions to the normal two-term tenure for family court judges who have demonstrated unusual ability and who remain keenly interested in serving on the family court bench.

State practices vary. Many assign judges to a particular division for one-year terms permitting renewal based on performance, overall needs, and individual preferences. Others assign judges to monthly, three-month, or six-month terms. Some states utilize indefinite terms. Task Force on Standards and Goals for Juvenile Justice and Delinquency Prevention, *Comparative Analysis of Standards and State Practices: Court Structure, Judicial and Nonjudicial Personnel and Juvenile Records,* 27 (1975).

Related Standards

1.41	Personnel Selection
1.422	Training of Judicial Personnel
3.123	Judicial Qualifications and Selection

3.123 Judicial Qualifications and Selection

In addition to those qualifications required for all judges serving on the highest court of general jurisdiction, family court judges should be attorneys who possess a keen and demonstrated interest in the needs and problems of juveniles. They should be assigned to the family court without regard to seniority, political considerations, or any other factors that detract from the objective evaluation of an individual's competence for an interest in service on the family court.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 8.4 and 17.1 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

The effectiveness of the Juvenile Justice System is dependent, in large part, on the calibre of the judges serving on the family court. This standard outlines the criteria that should and should not be utilized in assigning judges to the family court bench. No position is taken with regard to the method of judicial selection—i.e., election, appointment, or a combination thereof. The first basic qualification, in addition to those required of other judges of the highest court of general jurisdiction, is that the family court judge should be an attorney. This is already required in the vast majority of the states and is recommended by all recent standards and model legislative efforts. Although it is highly beneficial for family court judges to be familiar with other disciplines, legal training is essential.

The second factor is that the judge possess a keen and demonstrated interest in the problems and needs of juveniles. How that interest is to be determined is left to the states, but representation of persons before the family court is not intended to be the sole criterion. Factors such as seniority, or the lack thereof, or political affiliation should not be the determining factors. The family court should not serve as a temporary training ground for service in adult divisions of the general trial court.

Both the U.S. Department of Health, Education and Welfare, *Standards for Juvenile and Family Courts,* 103 (1975), and the National Council of Juvenile Court Judges, *Juvenile Court Evaluation Report* ch. 4 (1974) suggest a detailed list of personal attributes that family court judges should possess in addition to being a member of the state bar. These include:

1. Deep concern about the rights of people;
2. Interest in the problems of children and families;
3. Awareness of modern psychiatry, psychology, and social work;
4. Ability to make dispositions uninfluenced by own personal concepts of child care;
5. Skill in administration and ability to delegate;
6. Ability to conduct hearings in a kindly manner and talk to children and adults at their level of understanding without loss of the essential dignity of the court; and
7. Eagerness to learn (NCJCJ only).

See also Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Court Organization and Administration,* Standard 3.00 (draft, 1977).

The level of compensation for family court judges should be sufficient to attract and retain individuals with the skills, qualifications, and interests necessary for service on the family court bench and should be comparable to that of other judges of the highest court of general jurisdiction. *See, e.g., Report of the Task Force, supra* at Standard 17.12; ABA, *Standards Relating to Court Organization,* Section 1.23 (approved draft, 1974).

Specialized training for family court judges is discussed in Standard 1.422.

Related Standards

1.41	Personnel Selection
1.422	Training of Judicial Personnel
3.11	Jurisdiction
3.121	Relationship to Other Courts
3.122	Tenure of Family Court Judges

3.124 Use of Quasi-Judicial Decision Makers

Family court judges rather than quasi-judicial personnel, such as referees, masters, or commissioners, should preside over all adjudicatory and dispositional hearings and any hearings at which the detention, conditioned liberty, transfer, or temporary or permanent custody of a juvenile is at issue.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Delinquency Prevention*, Standard 8.3 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Court Organization and Administration*, Standard 3.10 (draft, 1977).

Commentary

This standard, in accordance with the position adopted by the Standards and Goals Task Force and the IJA/ABA Joint Commission, recommends that every decision which affects a juvenile's liberty or status should be made by a judge rather than by non- or quasi-judicial personnel. It applies to delinquency, noncriminal misbehavior, neglect, abuse, and adoption cases, as well as proceedings for termination of parental rights, custody, and admission to mental health services. It includes all decisions concerning detention, shelter care, emergency custody, or release prior to adjudication or disposition; transfer to another court; adjudication; and disposition, except the intake and initial detention, emergency custody, and release decisions made by law enforcement officers and protective services personnel pursuant to Standards 2.21-2.233 and 2.31-2.33, and by intake officers in accordance with the submission of a complaint. *See* Standards 3.141-3.147 and 3.151-3.158. The standard does not adopt a position regarding the use of nonjudicial personnel in other types of proceedings.

In several states, trained nonjudicial personnel are authorized to hear and dispose of a broad range of juvenile cases. The American Bar Association, *Standards Relating to Court Organization*, Section 1.12(b) (approved draft, 1974), encourages use of legally trained "judicial officers" to assist judges. The U.S. Department of Health, Education and Welfare, *Model Act for Family Courts*, Section 4 (1975) recommends the use of attorneys as referees in delinquency and neglect proceedings unless a party objects, the allegations in the petition are denied, or the hearing concerns waiver of juvenile jurisdiction and transfer to an adult court. Under the *Model Act for Family Courts*, a full rehearing before a judge is authorized upon request of a party. The National Conference of Commissioners on Uniform State Laws endorses the use of attorneys as referees in "routine and simple matters where the caseload of a court warrants it." *Uniform Juvenile Court Act*, Comment to optional Section 7 (1968).

The standard is premised upon the greater visibility and accountability of judges compared to referees, commissioners, and masters; the need to upgrade the status of the family court; and the administrative advantages of eliminating the cumbersome review and trial *de novo* system required in systems utilizing quasi-judicial decision makers. When additional decision makers are required, judges with the qualifications set forth in Standard 3.123 should be reassigned to the family court.

Where quasi-judicial decision makers continued to be utilized, they should have the same qualifications and be subject to the same standards of performance, training, and discipline as family court judges and should serve once renewable two-year terms. *See* Standards 1.422, 3.122, and 3.123. *Cf. Report of the Task Force, supra* at Standard 17.3.

Related Standards

1.41	Personnel Selection
1.422	Training of Judicial Personnel
3.11	Jurisdiction
3.121	Relationship to Other Courts
3.122	Tenure of Family Court Judges
3.123	Judicial Qualifications and Selection

3.125 Employment of a Court Administrator

Family courts with four or more judges (and where justified by caseload, family courts with fewer judges) should have a full-time professional court administrator.

The family court administrator should be an assistant to the administrator of the highest court of general jurisdiction, appointed by the presiding judge of that court, and serving under the supervision of the presiding judge of the family court.

The responsibility of the family court administrator should be to assure the effective and efficient operation of the family court in accordance with state and local law, procedures and practices, and the policies established by the presiding judge of the family court. Among the duties of the family court administrator should be:

a. Caseflow and calendar management;
b. Budget preparation and fiscal management;
c. Records management;
d. Personnel management, supervision, and training;
e. Procurement;
f. Space and facilities management;
g. Planning, research, and evaluation of methods to improve family court operations;
h. Coordination with administrative personnel in other courts and agencies; and
i. Dissemination of information to the public.

In jurisdictions without a sufficient caseload to warrant employment of a separate family court administrator, these functions should be performed by the administrator of the highest court of general jurisdiction.

Source:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Court Organization and Administration,* Standards 2.20 and 3.30 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Court Organization.*]

Commentary

This standard endorses the employment of a professional family court administrator to facilitate and upgrade the operation of the court, The term "professional court administrator" is intended to discourage appointment of individuals without the training, skills, and experience in court management necessary to carry out the complex duties that a court administrator is required to perform. The administrator should not also serve as the chief probation officer nor the director of court services, because these positions require different skills and full-time attention.

Because of the specialized procedure and short time limits that apply to the family court, its administration should be assigned to an individual without other administration duties whenever the caseload permits. The four-judge minimum suggested in the standard is intended as a rough guide. Because the family court is a division of the highest court of general jurisdiction and, therefore, should operate within the personnel, financial, and administrative policies of that court, the standard recommends that the family court administrator should be an assistant to the administrator of the general trial court and should be appointed by the presiding judge of that court. *See* Standard 3.121. However, the chief judge of the family court is in a far better position to assess the performance of the family court administrator and, therefore, should be responsible for the day-to-day supervision of the administrator's actions.

The standard spells out the matters for which the family court administrator should be responsible. Included within these duties should be maintenance of an adequate management information system, *see* Standards 1.21 *et.seq.*, development of all necessary forms, and juror management, as well as supervision of clerks and other administrative employees. *See* IJA/ABA, *Court Organization, supra.*

Specialized training for family court administrators is discussed in Standard 1.429.

Related Standards

1.41	Personnel Selection
1.429	Training of Administrative Personnel
3.11	Jurisdiction
3.121	Relationship to Other Courts

3.13 Counsel

3.131 Representation by Counsel—For the State

The state should be entitled to be represented by counsel in all proceedings arising under the jurisdiction of the family court in which the state has an interest.

Counsel for the state in matters before the family court should be from the office that normally represents the state in criminal proceedings before the highest court of general jurisdiction. Offices with six or more attorneys should establish a separate family court section, including legal, professional, and clerical staff.

The attorneys assigned to the family court section should be selected on the basis of interest, education, experience, and competence.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Prosecution Function,* Standards 1.1(a), 2.1 and 2.3(b) [hereinafter cited as IJA/ABA, *Prosecution Function*] (tentative draft, 1977); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 15.1-15.5 and 15.7 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard declares that the state should be represented by an attorney in all proceedings in which it has a direct interest. These include all matters arising under the delinquency, noncriminal misbehavior, and neglect and abuse jurisdictions of the family court, the jurisdiction over intra-family offenses or contributing to the delinquency of a minor, enforcement of support and adoption, termination of parental rights, and custody cases in which a state agency or state-supplied service is involved. The term "state" includes county, city, or other local units of governments. Hence, the office that normally represents the state in criminal proceedings could be the office of the district attorney, county attorney, solicitor, state attorney, or attorney general, depending on the particular organizational structure utilized by the state. *See* IJA/ABA, *Prosecution Function, supra; Report of the Task Force, supra.*

The President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* (1967) recommends against the use of state prosecutors in family or juvenile matters, stressing that the best interests of the family and child are more likely protected in informal proceedings. However, that recommendation was made before the decision in *In re Gault,* 387 U.S. 1 (1967), which heralded an awareness that informality in delinquency proceedings often serves to deprive the child of basic rights. The standard tracks the recommendations of the IJA/ABA, *Prosecution Function, supra,* and *Report of the Task Force, supra,* which provide for the participation of a "juvenile prosecutor" at every stage of every case in which the state has an interest. The standard contemplates that representation of the state by an attorney will contribute significantly to the improvement of the quality of justice dispensed by family courts. Participation of a prosecuting attorney should impress upon the parties the seriousness of the proceedings. It should also expedite the proceedings, improve the quality of the evidence considered, stimulate more competent representation of parties other than the state, and eliminate the present conflict of roles for judges, and probation and police officers.

Traditionally, neither the state nor the juvenile was represented by an attorney in family court. Because *In re Gault* mandated counsel for the child, many states have revised their practices to provide for state counsel to be present, at least in those cases in which the child is actually represented or in which the judge requests the prosecutor's presence.

The standard recommends creation of a unified family court section within the prosecutor's office serving the highest court of general jurisdiction. It is not intended that attorneys from the civil law section of the prosecutor's office or from a separate civil law state's attorney office should be excluded from the family court section. The standard merely seeks to encourage a unified structure similar to that recommended for the family court to facilitate the development of expertise in matters relating to juveniles and families and to promote managerial effectiveness and consistent policy toward cases involving juveniles. Like the standard on the qualifications for family court judges, *see* Standard 3.123, the third paragraph of this provision stresses that assignment to the family court section should be based on interest, experience, and competency and not on political factors, seniority, or the lack thereof. Assignments should be made by the prosecutor or the chief administrative assistant, and a senior attorney with considerable trial experience should be designated to head the section. The standard is intended to make clear that such assignments to the family court section should not be regarded as the bottom rung on the ladder to felony trial work to be endured and dispensed with as quickly as possible. Pay schedules for the family court section should be comparable to those for the rest of the office, part-time assignments should be avoided unless absolutely necessary, and adequate investigative and clerical staff should be assigned.

Specialized training for attorneys in the family court section of the prosecutor's office is discussed in Standard 1.423. In smaller jurisdictions, for which creation of separate family court units may not be practical, attorneys for the state appearing in family court proceedings should receive the same type of specialized training available to attorneys in larger offices.

Related Standards

1.41	Personnel Selection
1.423	Training of Prosecutorial Personnel
3.11	Jurisdiction
3.134	Role of Counsel
3.147	Notice of (Intake) Decision
3.155	Initial Review of Detention Decisions
3.156	Review of Conditions of Release
3.157	Initial Review of Emergency Custody Decisions
3.163	Decision to File a Petition
3.165	Determination of Probable Cause
3.166	Arraignment Procedures
3.171	Rights of the Parties
3.187	Predisposition Reports
3.188	Dispositional Hearings
3.189	Review and Modification of Dispositional Hearings
3.1810	Enforcement of Dispositional Orders—Delinquency
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812	Review of Dispositional Orders—Neglect and Abuse
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse
3.191	Right to Appeal

3.132 Representation by Counsel—For the Juvenile

A juvenile should be entitled to be represented by counsel in all proceedings arising from a delinquency, noncriminal misbehavior, neglect, or abuse action and in any proceeding at which the custody, detention, or treatment of the juvenile is at issue.

In delinquency and noncriminal misbehavior proceedings, the right to counsel should attach as soon as a juvenile is taken into custody by an agent of the state, a complaint is filed against a juvenile, or a juvenile appears at intake or at an initial detention hearing, whichever occurs first.

In all other actions in which a juvenile is entitled to representation by counsel, the right to counsel should attach at the earliest stage of the decisional process, except when temporary emergency action is involved and immediate participation of counsel is not practicable.

In any proceeding in which a juvenile is entitled to be represented by counsel, an attorney should be appointed whenever counsel is not retained for the juvenile; whenever it appears that counsel will not be retained; whenever there is an adverse interest between the juvenile and the juvenile's parents, guardian, or primary caretaker; or whenever appointment of independent counsel is otherwise required in the interests of justice.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Counsel for Private Parties,* Standard 2.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Counsel*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force for Juvenile Justice and Delinquency Prevention,* Standards 16.5 and 16.7 (1976) [hereinafter cited as *Report of the Task Force*]; U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 25 (1975).

Commentary

This standard recommends that juveniles should be represented by an attorney in nearly all proceedings before the family court. Although this broad entitlement to counsel is likely to involve additional public expense, it was the conclusion of the National Advisory Committee that few measures could more effectively assure fairness in the administration of juvenile justice.

Traditionally, states did not require that children in family or juvenile court proceedings be represented by counsel, although most did permit the family lawyer to be present and to assist the child and family if necessary. *In re Gault,* 387 U.S. 1, 36, 41 (1967) held that representation by counsel is constitutionally required at juvenile delinquency adjudications. *See also Kent v. United States,* 383 U.S. 541 (1966). Most states now provide for counsel: some providing court-appointed counsel, if necessary, at all stages of delinquency proceedings; some not specifying what stages of the proceedings require counsel; some providing counsel only upon request of the juvenile or upon indigence of the juvenile's family; and some providing counsel at the discretion of the judge. S.M. Davis, *Rights of Juveniles: The Juvenile Justice System,* 125-127 (1974). A number of states also provide a right to counsel for juveniles in neglect, dependency, and abuse matters.

The *Model Act for Family Courts, supra* recommends that counsel should also be provided to juveniles in neglect proceedings. Both the IJA/ABA Joint Commission and the Standards and Goals Task Force, *supra,* urge that juveniles should be entitled to counsel in any proceeding that may affect their status and custody. IJA/ABA, *Counsel, supra;* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pre-Adjudicatory Procedures,* Standards 5.1-5.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Pre-Adjudicatory Procedures*]; *Report of the Task Force, supra; see also* Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, *Juvenile Justice Standards and Goals,* Standard 12.1(b) (1976).

In recommending that juveniles be entitled to counsel in most family court proceedings, the standard recognizes that the same interests in preserving liberty and privacy and the same need for assistance "to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings. . . " and for effective advocacy, which require counsel in delinquency proceedings, *In re Gault,* 387 U.S. at 36, apply to noncriminal misbehavior, neglect and abuse, adoption, custody, and civil commitment cases. It recognizes, in addition, that counsel for the state or the parents will often be unable to represent both the interests of their client and the interests of the child. See IJA/ABA, *Counsel, supra; Report* *of the Task Force, supra;* M. Inker and C. Perretta, "A Child's Right to Counsel in Custody Cases," 5 *Fam. L. Q.* 108, 115 (1971).

The standard urges that the right to counsel should attach at the earliest stage of the proceedings. The intake, release, and charging processes may be crucial to the final outcome of the case and therefore require the same standard of diligent protection of the interests of the child as is afforded at adjudicatory hearings.

> The need for counsel is not confined to the adjudicatory stages of the proceeding. Both at intake and at disposition, counsel is crucial. In an earlier section of this report the importance of prejudicial determinations was stressed and recommendations were proffered for further institutionalizing the processes of nonjudicial disposition. Clearly such a system would invite unfettered authoritarianism by nonjudicial officials unless counsel were provded at the inception of informal proceedings involving coercion . . . In the juvenile no less than in the adult area, the presence of counsel representing the alleged offender is indispensable to a system of alternative tracks short of full use of the judicial proceeding. Of course law is an irksome restraint upon the free exercise of discretion. But its virtue resides precisely in the restraints it imposes on the freedom of the probation officer and the judge to follow their own course without having to demonstrate its legitimacy or even the legitimacy of their intervention. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 32-33 (1967). *See also* R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 246 (International Association of Chiefs of Police, 1973); IJA/ABA, *Pre-Adjudication Procedures, supra;* IJA/ABA, *Counsel, supra;* and *Report of the Task Force, supra.*

Few state statutes address the right to counsel at intake. A recent survey of over 400 courts in population centers of 50,000 or more indicated that although approximately 60 percent of the courts responded that counsel could be appointed at intake if necessary, there was virtually no attorney representation at intake.

The phrase "as soon as a juvenile is taken into custody by an agent of the state," in the second paragraph of the standard, is intended to include interrogation and eyewitness identification situations. See Standards 2.242-2.247, and 2.342-2.343. The "temporary emergency action" cited in the third paragraph refers to situations in which immediate action is necessary to save a child's life or prevent imminent injury. Counsel should be provided as soon as possible after the temporary emergency action has been taken.

The final paragraph of the standard discusses the circumstances in which counsel should be appointed. In keeping with the importance attached to representation by counsel, the provision is intended to assure that juveniles are provided with counsel whenever they appear without a lawyer at their side. Many state provisions authorizing appointment of counsel cite one or a combination of the following considerations: indigence of the family, the interests of justice, or a conflict of interests between the juveniles and their families.

The Model Act for Family Courts, section 25, *supra* provides for appointment of counsel whenever one is not retained in delinquency proceedings, but applies the adverse interests criterion in neglect proceedings. Because the vast majority of juveniles will not be able to retain counsel with their own resources, the key issue is when the proffer of counsel by a parent should be ignored and an attorney appointed to represent a child in a matter before the family court. The major argument against appointment of independent counsel, other than the expense, is the interference with family autonomy and parental authority implicit in such a practice. For example, some children may be placed in the position of being admonished by the judge to obey their parents soon after being advised by their attorney to ignore parental demands to admit their guilt. However, as noted earlier, it seems doubtful that an attorney representing parents accused of neglect or abusing a child, *see* Standard 3.113, or who have complained that their child has disregarded their authority, *see* Standard 3.112, or who are engaged in a custody fight over the child, could forcefully advocate the client's interests and at the same time speak for the child. Accordingly, the standard intends that independent counsel be appointed to represent a juvenile whenever an attorney representing the juvenile's parents would have a duty to advocate a position that an attorney representing the juvenile would have a duty to oppose; whenever an attorney representing the juvenile's parents has a duty to contend on their behalf, which may prejudice the juvenile's interests at any point in the proceedings; and whenever the juvenile's attorney would have to accommodate the juvenile's interests to those of some third person or institution, including the attorney's employer. IJA/ABA, *Counsel, supra;* Standard 3.2; ABA, *Canons of Professional Ethics,* Canon 6; ABA, *Code of Professional Responsibility,* DR 5-107(b).

Notice to juveniles of their rights to be represented by an attorney is provided for in other standards. *See,* e.g., Standards 2.241-2.242, 2.47, 2.342-2.343, 3.146, 3.155-3.157, 3.164-3.166, 3.176, and 3.186.

In *Faretta v. California,* 422 U.S. 806 (1975), the Supreme Court held that defendants in criminal proceedings have a constitutional right to represent themselves. The opinion made clear that counsel should not be appointed to represent a defendant who wishes to exercise the right but specified that appointment of standby or advisory counsel to protect the defendant's rights and to provide for the situation in which the defendant's conduct requires his/her removal from the courtroom does not impinge upon the right of self-representation. *Id.,* at 835, fn. 46. Although the court did not discuss the impact of the *Faretta* decision on proceedings involving juveniles, and there is a possible distinction on the basis of the juvenile's lack of maturity, education, and experience, the constitutional status given the right of self-representation calls provisions barring waiver of counsel into serious question. *See Model Act for Family Courts,* Section 25, *supra.*

Although there are special problems with allowing juveniles to represent themselves in family court proceedings, most states permit waivers following consultation with parents or counsel if, considering the child's age, intelligence, and experience, the context in which waiver was made, and the "totality of the circumstances," the waiver is shown to be competent, voluntary, and intelligent. It was the conclusion of the National Advisory Committee that further investigation into the ramifications of the right of self-representation on police practices and family court cases is necessary before a standard discussing the application of this right to juveniles can be recommended.

Related Standards

1.424 Training—Legal Services Personnel
2.242 Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.243 Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244 Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.247 Procedures Applicable to the Interrogation of Juveniles
2.342 Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
2.343 Procedures Upon Taking a Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
3.131 Representation by Counsel—For the State
3.133 Representation by Counsel—For the Parents
3.134 Role of Counsel
3.147 Notice of (Intake) Decision
3.155 Initial Review of Detention Decisions
3.156 Review of Conditions of Release
3.157 Initial Review of Emergency Custody Decisions
3.165 Determination of Probable Cause
3.166 Arraignment Procedures
3.169 Appointment and Role of a Guardian *ad litem*
3.171 Rights of the Parties
3.176 Uncontested Adjudications
3.188 Dispositional Hearings
3.189 Review and Modification of Dispositional Decisions
3.1810 Enforcement of Dispositional Orders—Delinquency
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812 Review of Dispositonal Orders—Neglect and Abuse
3.1813 Enforcement of Dispositional Orders—Neglect and Abuse
3.192 Right to Counsel (on appeal) and Record of the Proceedings
3.2 Noncourt Adjudicatory Proceedings

3.133 Representation by Counsel—For the Parents

Persons who are the parents, guardians, or primary caretakers of juveniles subject to the noncriminal misbehavior, neglect, or abuse jurisdiction of the family court or who are themselves subject to that jurisdiction should be entitled to appointed counsel throughout the proceedings if they are unable, for financial reasons, to retain an attorney.

The parents, guardians, or primary caretakers of juveniles subject to the jurisdiction of the family court over delinquency should be entitled to appointed counsel at the dispositional stage of the proceedings if they are unable, for financial reasons, to retain an attorney and if it appears that they will be required to participate affirmatively in the dispositional order or plan.

Source:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 16.6 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

A parent's right to raise his/her child has been described by the Supreme Court as a "basic civil right far more precious than property rights." *Stanley v. Illinois,* 405 U.S. 645, 651 (1972). This standard recommends that parents or parental surrogates be entitled to be represented by counsel whenever that right is challenged by the state or whenever they may be ordered by the family court to play an active role in the disposition following a delinquency adjudication.

The first paragraph urges that counsel be afforded to the parents, guardians, or primary caretakers of children alleged to have been neglected or abused. The right of parents to be represented by counsel in such cases has been recognized by a number of states as well as by several recent sets of standards and model acts. *See* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 25(b) (1975); National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act,* Section 26 (1968); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Counsel for Private Parties,* Standard 2.3b (tentative draft, 1976); *Report of the Task Force, supra.*

The standard also recommends that parents be entitled to counsel throughout noncriminal misbehavior proceedings. This is somewhat broader than the position of the *Report of the Task Force, supra* which suggests that counsel need only be appointed at the disposition stage of such proceedings "when it appears that [a parent] will be required to participate affirmatively in the dispositional order or plan." Because the jurisdiction over noncriminal misbehavior focuses on the actions of the family as well as those of the juvenile, the parents should be entitled to counsel during the adjudicatory and pre-adjudicatory phases of the proceeding, especially when allegations of misuse of parental authority have been made by the state or raised as a defense by the juvenile. *See* Standard 3.112. As with juveniles, the parents' rights to counsel should attach at the earliest stage of the decisional process. *See* Standard 3.132.

In delinquency proceedings, it is recommended that parents and parental surrogates should be entitled to have an attorney only at the dispositional stage and, even then, only when it is likely that the parents may be required to take some affirmative action, such as providing treatment or opportunities for their child, supervising his/her conduct, or simply retaining custody or responsibility for the respondent. This is in accord with the view of the *Report of the Task Force. But see* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pre-Adjudication Procedures,* Standard 6.5 (tentative draft, 1977). No role is provided for parents during the predisposition phases of delinquency proceedings, because the behavior in question is only that of the child. Their interests are not directly at issue, hence party status appears unnecessary. If the parents initiate the proceedings, support the petition, or acquiesce in the exercise of delinquency jurisdiction, their interests are almost identical to those of the state. If they oppose the petition or support the child's case, their interests are almost identical to those of the child. In either instance, the interests are already protected by counsel.

It has been urged that even if parents were not granted party status prior to disposition, there should be provision for appointment of counsel at an early stage in the proceedings. This is premised on the need of parents, in many cases, for counsel to explain what is happening in the case in order that they might provide guidance to their child and the possibility that they may not trust the explanations and judgments of the juvenile's appointed attorney, so that without having counsel of their own, they would not be able to evaluate the advice provided. In addition it has been suggested that because the standard is not intended to bar retention of counsel by the parents at any stage of any proceeding within the jurisdiction of the family court, failure to provide for appointed counsel would put indigent parents at a special disadvantage.

However, the National Advisory Committee concluded that to provide for appointed counsel would encourage parents to take an active role in delinquency adjudication hearings and that such a role would complicate and lengthen the proceedings without substantial benefit. It was noted that the provision on the role of counsel in family court proceedings, Standard 3.134, encouraged counsel for accused delinquents to advise a juvenile to seek the advice of his/her parents.

In each of the instances in which a parent, guardian, or primary caretaker is entitled to counsel, there must be a determination that the person so entitled is indigent before an attorney is appointed. Unlike Standard 3.132, this provision does not assume that the failure to appear with counsel is due to the inability to afford legal services. The standard does not attempt to define indigence or recommend the manner in which a person's indigence or nonindigence should be determined. The definition of and procedures for determining indigence vary greatly among and within states. *See* S. Krantz *et. al., The Right To Counsel in Criminal Cases: The Mandate of Argersinger v. Hamlin* (1976); National Study Commission on Defense Services, *Draft Report and Guidelines for the Defense of Eligible Persons,* 113-163 (National Legal Aid and Defender Association, 1976).

A right to appointed counsel is not recommended in custody, adoption, paternity, support, and other such proceedings, because these disputes are generally between private parties rather than between the parent and the state. Hence, the imbalance of resources and power between the parties is considerably lessened. However, the scope of the right to counsel for adults charged with committing an intrafamily criminal offense or contributing to the delinquency of a minor should be the same as that for any other criminal defendant, i.e., they should be entitled to counsel at all critical stages of the criminal proceedings and may not be sentenced to a term of incarceration unless they were represented by or waived their right to an attorney. *See, e.g., Gideon v. Wainwright,* 372 U.S. 335 (1963); *Argersinger v. Hamlin,* 407 U.S. 25 (1972).

Related Standards

2.244	Procedures Following Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.343	Procedures Upon Taking a Juvenile Into Emergency Protective Custody
3.131	Representation by Counsel—For the State
3.132	Representation by Counsel—For the Juvenile
3.134	Role of Counsel
3.146	Intake Investigation
3.155	Initial Review of Detention Decisions
3.156	Review of Conditions of Release
3.157	Initial Review of Emergency Custody Decisions
3.165	Determination of Probable Cause
3.166	Arraignment Procedures
3.171	Rights of the Parties
3.186	Predisposition Investigations
3.188	Dispositional Hearings
3.192	Right to Counsel (on appeal) and a Record of the Proceedings

3.134 Role of Counsel

The principal duty of an attorney representing the state in a family court matter is to seek justice.

The principal duty of an attorney representing a private individual in a matter within the jurisdiction of the family court should be to represent zealously that individual's legitimate interests. Determination of the client's interest under the law should ordinarily remain the responsibility of the client.

If an attorney finds, after interviews and other investigation, that a client cannot understand the nature and consequences of the proceedings and is therefore unable rationally to determine his/her own interests in the proceedings, the attorney should bring that circumstance to the court's attention, ask that a guardian *ad litem* be appointed on the client's behalf, and advise the court of possible conflicts of interest between the client and any person under consideration for appointment as guardian *ad litem*.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 16.2 and 16.3 [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Prosecution Function*, Standard 1.1(b), and *Standards Relating to Defense Counsel*, Standard 3.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Prosecution Function*, and IJA/ABA, *Defense Counsel*, respectively].

Commentary

The thrust of this standard is that the role of counsel in family court proceedings, whether representing the state, the juvenile, or the parent, is to advocate that which is in the best interest of the client, with an underlying awareness that the aim of the proceeding is to determine the truth of the allegations and, upon adjudication, to determine the disposition that best serves the interests of the juvenile and the community.

The first paragraph of the standard recommends that the prosecutor should represent the interest of the state zealously. However, because the state has multiple interests, which include both protection of the public and the development of children into productive law-abiding citizens, the degree to which a prosecutor plays an adversary role may vary from stage to stage in family court proceedings. In accordance with Standard 3.175, the attorney for the state should scrupulously avoid the use of prosecutorial discretion to induce the juvenile to admit guilt, accept a negotiated plea, or submit to detention or incarceration.

The remainder of the standard reflects the conviction that clients—juveniles, parent, or a third party—bear the chief responsibility for determining what their interests are. The attorney's role is limited to advising the client about those interests and, once the client has decided, to advocate those interests in relevant proceedings. This position is adopted also by the *Report of the Task Force, supra;* the IJA/ABA, *Defense Counsel, supra;* and the Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards, *Juvenile Justice Standards and Goals*, Standards 12.1(k) and (l) (2d draft, 1975).

The standard adopts the position that "most children are sufficiently capable of understanding the basic nature of the proceeding and its potential consequences to be able to decide what position to adopt . . .," IJA/ABA, *Defense Counsel, supra* at 114-115. However, attorneys for children should be prepared to advise their clients about the legal consequences of various decisions, parental or societal perceptions of their behavior, the advisability of consulting with parents or counselors about various courses of action, the desirability of accepting certain social services and similar matters about which the juvenile may be uninformed. Similarly, attorneys for parents should be prepared to advise the parents about what seems to be in the best interest of the child, even if the courses of action indicated are not in the interests of the parents. However, the line between advising and decision making must be carefully observed.

In placing decision-making responsibility on the client, the standard is intended to make the representational obligations of attorneys in family court consistent with those attorneys in civil and criminal proceedings in other divisions of the highest court of general jurisdiction. In doing so it rejects both the guardian *ad litem* and *amicus curiae* models of representation for competent juveniles. The guardian *ad litem* model requires the juvenile's attorney to serve not only the legal interests of the client, but also to determine what course best promotes his/her general welfare with or without the juvenile's concurrence. The *amicus curiae* model relegates the attorney to the role of liaison between the juvenile, the judge, and the parents. The attorney does not present a juvenile's case or advocate a point of view but simply protects the juvenile's formal legal rights as he/she contributes to the final consensus about what should be done in the case.

By contrast, the standard requires advocacy of the self-determined interests of the child in all cases except when the attorney believes that the client is unable to understand the proceedings, to assist counsel, and to make a rational determination of his/her best interests. In such cases, the attorney is obligated to bring the matter to the attention of the family court and to request that a guardian *ad litem* be appointed. *See* Standard 3.169. The attorney does not thereby relinquish the role of child advocate. Counsel should be prepared to advise the court about any adversity of interests between the guardian and the juvenile, particularly when the guardian is a close relative of the juvenile.

Once the guardian *ad litem* is appointed, he/she becomes responsible for determining the best interests of the child, and the attorney remains obligated to advocate those interests in the proceedings. *See* Standard 3.169.

Related Standards

3.131	Representation by Counsel—For the State
3.132	Representation by Counsel—For the Juvenile
3.133	Representation by Counsel—For the Parents
3.169	Appointment and Role of Guardians *Ad Litem*
3.187	Predisposition Reports
3.188	Dispositional Hearings

3.14 Intake

3.141 Organization of Intake Units

An intake unit should be established as a separate department or agency to review complaints submitted pursuant to the jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse, and to make the initial determinations regarding the release or retention in custody of juveniles who are named in such complaints.

The minimum qualifications for employment as an intake officer should include a masters degree in social work or two years of graduate study in the behavioral sciences, participation in a field training program, and one year of full-time employment under professional supervision for a correctional or social services agency.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standards 3.1, 3.4, and 4.1(c) (d) and (e) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Probation Function*]; National Advisory Committee on Criminal Justice and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 21.1 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

Standard 3.141 recommends formation of specialized intake units to screen incoming delinquency, noncriminal misbehavior, and neglect and abuse complaints and to determine the initial custodial status of juveniles named in such complaints. The organization and location of such units will depend on state and local demographic factors and governmental structure.

The IJA/ABA, *Probation Function, supra,* and the *Report of the Task Force, supra* recommend that intake units should be placed in an executive agency rather than administered directly by the family courts. Although judicial administration of intake services is the norm in many jurisdictions and has been endorsed by the National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* Section 14.2 (1973) [hereinafter cited as *Courts*], serious questions have been raised regarding the possible impact of this practice on the impartiality of the court. It has been suggested that because intake personnel perform a screening function akin to that played by the prosecution in adult criminal proceedings, they should, like the prosecutor, be independent of judicial administrative control, and that although the family court should participate in the development of the policies and rules governing intake and detention, the authority to hire, supervise, and fire intake personnel may lead to a type of judicial regulation over access to the court and informal predetermination of individual cases that would significantly impair a judge's ability to serve as a neutral reviewer of administrative action and impartial trier of the facts. *See In re Reis,* 7 Crim. L. Rptr, 2151 (R.I. Fam. Ct., April 14, 1970); *but cf. In re Appeal in Pima County Anonymous, Juv. Action No. J-24818-2,* 110 Ariz. 98, 515 P.2d 600 *cert. denied, appeal dismissed,* 417 U.S. 939 (1974). In addition, the President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections,* 35 (1967) has suggested that in many instances judges may have neither the time, resources, nor management skills necessary to provide the "continuous intensive administrative attention" required to oversee the operations of an intake agency effectively, *but see Courts, supra* at 298.

The standard limits the functions to be performed by intake units to the review of complaints, *see* Standard 3.142, and determinations regarding detention, release, or emergency custody. *See* Standards 3.151 *et. seq.* No provision is made for direct supervision of or furnishing of services to juveniles and their families by intake personnel. If the provision of services is called for, the subject of the complaint should be referred to the proper agency or private program and the complaint promptly dismissed unless the referral is refused, ignored, or shown to be inappropriate within thirty days. *See* Standard 3.142. Informal probation, despite good intentions, can result in imposing substantial constraints on liberty under threat of prosecution without adequate due process safeguards. *See* Gorelick, "Pretrial Diversion: The Threat of Expanding Social Control," 10 *Harv. C. R.-C. L. L. Rev.* (1975); President's Commission on Law Enforcement and Administration of Justice, 17 (1967); R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 259 (International Association of Chiefs of Police, 1973); National Council on Crime and Delinquency/National Council of Juvenile Court Judges, *Model Rules for Juvenile Court,* 15 (1969); *but see* National Advisory, Committee on Criminal Justice Standards and Goals, *Corrections,* 225 (1973). Moreover, many commentators question the effectiveness of "coerced treatment." *See, e.g.*, U.S. Department of Health, Education and Welfare, *Standards for Juvenile and Family Courts*, 58 (1975); D. Fogel, *We are the Living Proof: The Justice Model for Corrections* (1975).

In view of the significance and complexity of the discretionary decisions made by intake officers, the standard recommends that intake officers should have a masters degree in social work or equivalent graduate work in the behavioral sciences, as well as actual experience through fieldwork and full-time employment in a correctional or social service agency. The IJA/ABA provisions on which the standard is based recommend graduate work but do not require either a graduate degree or fieldwork as part of the educational program. The National Advisory Committee concluded that the central role played by the intake unit in the juvenile justice process endorsed by these standards requires that individual intake officers possess the highest possible qualifications, and that fieldwork and actual work experience in juvenile justice or related agencies or organizations is an essential part of the preparatory process. Salaries of intake officers should be commensurate with their education, training, and experience. The standard is not intended to discourage the use of paraprofessionals and volunteers to assist the professional intake staff.

Related Standards

1.41 Personnel Selection
1.425 Training for Personnel Providing Direct Services to Juveniles
2.241 Procedures Following a Decision Not to Refer to Intake (Law Enforcement Agencies)
2.341 Procedures Following a Decision Not to Refer to Intake (Nonlaw Enforcement Agencies)
3.142 Review of Complaints
3.143 Criteria for Intake Decisions—Delinquency
3.144 Criteria for Intake Decisions—Noncriminal Misbehavior
3.145 Criteria for Intake Decisions—Neglect and Abuse
3.146 Intake Investigations
3.147 Notice of Decision
3.151 Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152 Criteria for Detention in Secure Facilities—Delinquency
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
4.31 Community Supervision

3.142 Review of Complaints

Upon receipt of a complaint, an intake officer should make an initial determination whether the complaint is sufficient to support the filing of a petition. If legal sufficiency of the complaint is unclear, the intake officer should ask the family court section of the prosecutor's office to make the determination. If the complaint is found to be sufficient, the intake officer should determine whether to recommend that a petition be filed, to refer the person named in the complaint for services, or to dismiss the complaint.

The determination should be made as expeditiously as possible. If the subject of a delinquency or noncriminal misbehavior complaint or a juvenile alleged to be neglected or abused is in custody, the intake decision should be made within twenty-four hours of the initial filing of the complaint, excluding nonjudicial days. If the subject of such complaints or a juvenile alleged to be neglected or abused is not in custody, the intake decision should be made within thirty calendar days of the initial apperance of the subject of the complaint at intake.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function; Intake and Predisposition Services,* Standards 1.2-1.4, 1.7 and 1.14 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Probation Function*].

Commentary

This standard defines the alternative actions open to the intake officer and the time limits within which the intake determination must be made. The intake officer should first examine the complaint to assure that the allegations are sufficient to bring the person named therein within the jurisdiction of the family court—i.e., whether the conduct alleged in the complaint took place within the court's geographical jurisdiction and whether the conduct appears to fall within the family court's delinquency, noncriminal misbehavior, or neglect and abuse jurisdiction. *Cf.* Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs* (1976) [hereinafter cited to Florida, *Manual*]. This cursory review is to insure that an individual's liberty is not restrained or his/her privacy invaded on the basis of clearly inadequate or improper allegations. If the complaint is not sufficient, it should be determined or referred to the complainant for further information. If there is a question about the legal sufficiency of the complaint, the intake officer should consult with an attorney from the family court section of the prosecutor's officer. If the complaint appears to be sufficient, the intake officer must then determine whether, in light of the criteria set forth in Standards 3.143, 3.144, and 3.145, to dismiss the complaint; to refer the subject of the complaint, i.e., the juvenile, when the complaint alleges a delinquent act, noncriminal misbehavior other than repeated misuse of parental authority, or abandonment as defined in Standard 3.113(a), and the parent or parental surrogate, when the complaint alleges other forms of neglect or abuse or a misuse of parental authority; or to recommend to the prosecutor that a petition be filed. Under Standard 3.163, the family court section of the prosecutor's office retains the authority to make a final determination regarding the legal sufficiency of the complaint and to file the petition.

The standard recommends that intake decisions should be made within twenty-four hours if the subject of the complaint is in custody. However, days on which the family court is not in session, i.e., weekends and holidays, are not counted against this time limit in order to give the intake officer an opportunity to investigate the availability of services for a juvenile who is in custody before deciding whether it is in the best interest of the community and the juvenile—and for noncriminal misbehavior and neglect and abuse complaints, in the best interest of the family—to dismiss the complaint, refer for services, or recommend that a petition be filed. Under Standards 3.155, 3.157, and 3.161, a hearing to review the decision to detain or hold in emergency custody must be held within twenty-four hours of the time at which the person is taken into custody, whether or not the intake decision has been made, because of the substantial impact that out-of-home custody may have on a child. In cases not involving detention or emergency custody, a thirty-day limit is proposed, although it is anticipated that most intake decisions can and will be made well within this time period. *The Report of the Task Force, supra* recommends that in delinquency cases, the intake decision should be made within forty-eight hours for juveniles who are detained, and within thirty days for juveniles who are not detained. Florida, *Manual, supra* at Section 5.6.1(a), provides a 24-hour limit for intake decisions in delinquency cases when the juvenile is detained, and fifteen-day limit when the juvenile is not detained.

Immediate dismissal of the complaint is not required when a person is referred to services, because intake officers may be discouraged from selecting a nonjudicial disposition if there is no possibility of recommending the filing of a petition should the person fail at least to sample the offered service. IJA/ABA, *Probation Function, supra; but see* National Council on Crime and Delinquency/National Council of Juvenile Court Judges, *Model Rules for Juvenile Court,* 15 (1969); National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* 225 (1973). However, in keeping with the importance of assuring that referal services are provided and accepted on a voluntary basis, and to limit the period of uncertainty, the decision to dismiss the complaint or recommend that a petition be filed may not be deferred beyond the thirty-day limit set for noncustody cases. R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 256 (International Association of Chiefs of Police, 1973); *but see* IJA/ABA, *Probation Function, supra* (deferral period of up to ninety days); *Report of the Task Force, supra* (deferral period of up to ninety days); National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act,* Section 10 (1968) ("informal adjustments" may continue for three months and may be extended by the court for up to an additional three months).

It is the intent of this standard that intake officers should honor the request of the subject of a complaint for a judicial determination of the truth of the allegations by recommending that a petition be filed without regard to whether such a recommendation would normally be made under the criteria listed in Standards 3.143 to 3.145. However, before acting on such a request, the intake officer should urge the subject of the complaint to consult with his/her attorney.

Related Standards

2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.222	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.242	Procedures Following Referral to Intake—Delinquency (Law Enforcement Agencies)
2.243	Procedures Following Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244	Procedures Following Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.248	Form of Complaint
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.342	Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
3.141	Organization of Intake Units
3.143	Criteria for Intake Decisions—Delinquency
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior
3.145	Criteria for Intake Decisions—Neglect and Abuse
3.146	Intake Investigation
3.147	Notice of Decision

3.143 Criteria for Intake Decisions—Delinquency

State and local agencies responsible for intake services should develop and publish written guidelines and rules regarding intake decisions for complaints based on the delinquency jurisdiction of the family court.

In determining what disposition of a sufficient delinquency complaint best serves the interests of the community and of the juvenile, the following factors should be considered:

- **a. The seriousness of the alleged offense;**
- **b. The role of the juvenile in that offense;**
- **c. The nature and number of contacts with the intake unit and family court that the juvenile has had and the results of those contacts;**
- **d. The juvenile's age and maturity; and**
- **e. The availability of appropriate services outside the juvenile justice system.**

Referral for services or dismissal should not be precluded for the sole reason that the complainant objects or that the juvenile denies the allegations.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standards 1.6 and 1.8 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Probation Function*].

Commentary

This standard outlines the basis on which intake officers should make the intake decisions described in Standard 3.142. Although the standard sets forth the general criteria to be used, detailed rules and guidelines should be developed to operationalize these criteria and other procedures and to promote consistency in intake decisions. *See, e.g.,* Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs,* Section 5.6.1(b)(i-xiii)(1976). The family court and the state and local agencies, departments, and programs affected by intake decisions should participate in the development of these guidelines, but final responsibility for their promulgation should rest with the agency directly responsible for the provision of intake services. *The National Advisory Committee recommends the development of rules and guidelines governing intake decisions as an action that states can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

The standard outlines five criteria on which intake decisions in delinquency cases should be based. These five factors should be considered in concert with each other in reaching the intake decision.

The first criterion listed is the seriousness of the delinquent conduct, i.e., the nature and extent of harm to others resulting from the alleged offense. The provision approved by the IJA/ABA Joint Commission on which this standard is based lists as specific criteria: "whether the conduct caused death or personal injury, severity of personal injury, extent of property damage, value of property damaged or taken, whether property taken is recovered and whether victim was threatened or intimidated by display of weapons, physical force or verbally." IJA/ABA, *Probation Function, supra* at 1.8(b)(1). *See also* Florida, *Manual, supra* at 5.6.1(b); California Proposed Juvenile Court Rules, Rule 1307 (tentatively adopted, May 1976). Others have suggested that a serious offense be defined in terms of the felony-misdemeanor distinction or in terms of a list of specified offenses. *See, e.g.,* Ferster, Courtless, and Snethen, "Separating Official and Unofficial Delinquents: Juvenile Court Intake," 55 *Iowa L. Rev.* 874 (1970); California Juvenile Court Deskbook, Section 4.7 (1972). However, juveniles who commit some acts that are technically felonies or one of the enumerated offenses, may not constitute such a threat to society as to warrant judicial handling of the matter on that basis. The President's Commission on Crime in the District of Columbia, *Report,* 661 (1966); R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 247-248 (International Association of Chiefs of Police, 1973).

The second criterion is the role that the juvenile allegedly played in the offense. The provision adopted by the IJA/ABA Joint Commission proposes that when a group of juveniles are alleged to have committed a delinquent act together, equity requires that they be treated alike. Hence, in a leader/follower situation, if the intake officer determines on the basis of the seriousness of the prior record and other factors that a petition should be filed against the leader of the group, a petition should ordinarily be filed against all. Although not intending to denigrate the importance of equal treatment, the National Advisory Committee goes no further than recommending role as an appropriate point to consider.

The third criterion is the nature, number, and result of prior contacts with intake services and the family court. *See* Standards 1.531-1.534. Information regarding past referrals and the juvenile's response to them seems essential if diversion for services is to be retained and encouraged as an alternative, and there is little doubt that prior adjudications are relevant to intake decisions. Use of such records does imply that the threshold decision on whether a delinquency case should or should not proceed may be based, in part, on unproven allegations. This use appears little different than the commonly accepted practice of using arrest records in determining dispositions and sentences in delinquency and criminal proceedings. To assure that incomplete or inaccurate information is not used and that unwarranted assumptions are not made from records of prior contacts, the standard requires that the results of any prior contact—not only the nature and number of those contacts—be considered and that the right to counsel be extended to intake proceedings. *See* Standards. 1.54-1.56, 3.132, and 3.133. The IJA/ABA Joint Commission and a number of commentators and standards-setting groups have endorsed consideration of a juvenile's prior contacts with intake and the family court. *See, e.g,* IJA/ABA, *Probation Function, supra;* Kobetz and Bosarge, *supra* at 248; President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report on Juvenile Justice and Youth Crime,* 17 (1967); Ferster, Courtless, and Snethen, *supra* at 1151; *see also* Florida, *Manual, supra* at 5.6.1(b); California Proposed Juvenile Court Rules, *supra.* Standards 1.51-1.56 govern the retention and dissemination of such records.

The fourth consideration is the juvenile's age and maturity. The fact that a particular juvenile is ten or seventeen years of age should not in and of itself be determinative whether or not to recommend the filing of a petition. It must be weighed together with all of the other factors. *See* IJA/ABA, *Probation Function, supra;* Florida, *Manual, supra.*

The final criterion is the availability of services outside the juvenile justice system that are suited to the juvenile's needs. The unavailability of services should not necessarily imply that a petition should be filed when other criteria suggest that dismissal of the complaint is the proper disposition.

Absent from this list are factors such as school attendance and behavior and the juvenile's relationship with his/her family. *See, e.g.,* Kobetz and Bosarge, *supra,* at 248; Florida, *Manual, supra;* California Proposed Juvenile Court Rules, *supra.* Serious questions can be raised regarding the equity in differentiating between two youths accused of burglary or armed robbery on the basis of their school attendance or ability to communicate with their parents. However, if the listed criteria point to dismissal, these social factors may be considered in determining which if any available services may be appropriate.

Also absent is consideration of the accused youth's "attitude." *See* IJA/ABA, *Probation Function, supra* at Standard 1.8; Kobetz and Bosarge, *supra* at 248; Florida, *Manual, supra;* California Proposed Juvenile Court Rules, *supra.* As noted in President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Justice and Youth Crime,* 17 (1967):

> Even more troubling is the question of the significance of a juvenile's demeanor. Is his attitude, remorseful or defiant, a sound measure of his suitability for pre-judicial handling? Can the police, or anyone else for that matter, accurately detect the difference between feigned and genuine resolve to mend one's ways, or between genuine indifference to the law's commands and fear engendered defiance?

Finally, the standard urges that a recommendation to file a petition should not be made merely because the subject of a complaint is unwilling to acknowledge responsibility or the complainant objects to a dismissal of the complaint. However, as is noted in the Commentary to Standard 3.142, if a juvenile, after consultation with counsel, requests a judicial determination of the allegations, that request should be honored.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.242	Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
3.111	Jurisdiction Over Delinquency
3.141	Organization of Intake Units
3.142	Review of Complaints
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior
3.145	Criteria for Intake Decisions—Neglect and Abuse
3.146	Intake Investigation
3.147	Notice of Decision
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152	Criteria for Detention in Secure Facilities—Delinquency
3.182	Criteria for Dispositional Decisions—Delinquency

Focal Point Social Interaction:

Cor. J-1	Diversion
Cor. J-2	Alternative Approaches to Juvenile Misconduct

3.144 Criteria for Intake Decisions—Noncriminal Misbehavior

State and local agencies responsible for intake services should develop and publish written guidelines and rules regarding intake decisions for complaints based on the jurisdiction of the family court over noncriminal misbehavior.

In determining what disposition of a sufficient noncriminal misbehavior complaint best serves the interests of the juvenile, the family, and the community, the following factors should be considered:

- **a. The seriousness of the alleged conduct and the circumstances in which it occurred;**
- **b. The age and maturity of the juvenile with regard to whom the complaint was filed;**
- **c. The nature and number of contacts with the intake unit and the family court that the subject of the complaint and his/her family has had;**
- **d. The outcome of those contacts, including the services to which the juvenile and/or family have been referred and the results of those referrals; and**
- **e. The availability of appropriate services outside the juvenile justice system.**

Referral for services or dismissal should not be precluded for the sole reason that the complainant objects or that the person named in the complaint denies the allegations.

Sources:

Standard 3.144 is based on the jurisdiction of the family court over noncriminal misbehavior defined in Standard 3.112 and draws on criteria set forth in Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function: Intake Predisposition Investigative Services,* Standards 1.6 and 1.8 (tentative draft, 1977).

Commentary

This standard outlines the issues to be considered in making the intake decision on complaints filed under the noncriminal misbehavior jurisdiction of the family court. Although similar to the criteria specified for intake in delinquency cases, the criteria in this standard focus on the family rather than the juvenile alone and are designed to fulfill the requirement in Standard 3.112 that "the family court should not exercise its jurisdiction over noncriminal misbehavior unless all available and appropriate noncoercive alternatives to assist the juvenile and his/her family have been exhausted. Also in keeping with the provisions of Standard 3.112, the term "seriousness" in paragraph (a) is intended to refer to such factors as the length of the juvenile's absences from home, the number of days missed from school, and the nature of the parental demand disregarded or misused, rather than to the extent of harm caused to others.

As in Standard 3.143 the *National Advisory Committee recommends the development of rules and guidelines governing the intake process in noncriminal misbehavior cases as an action that each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.* The development of such guidelines is especially critical for noncriminal misbehavior cases because of the abuses to which this type of jurisdiction has been subject, *see* Commentary to Standard 3.112, and the emphasis in these standards on the use of voluntary services. Although the rules and guidelines should be issued by the agency responsible for intake, *see, e.g.*, Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs* (1976), the family court and the state and local agencies, departments, and programs affected by intake decisions should participate in their development.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.243	Procedures Following Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)

2.321 Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
2.342 Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
3.112 Jurisdiction Over Noncriminal Misbehavior
3.141 Organization of Intake Units
3.142 Review of Complaints
3.143 Criteria for Intake Decisions—Delinquency
3.145 Criteria for Intake Decisions—Neglect and Abuse
3.146 Intake Investigation
3.147 Notice of Decision
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior

Prevention Strategies

Focal Point Social Interaction:
Cor. J-1 Diversion
Cor. J-2 Alternative Approaches to Juvenile Misconduct
Focal Point Social Institutions:
Cor. F-3 Crisis Intervention
Cor. Ed-3 Alternative Education
Focal Point The Individual:
Cor. F-1 Individual and Family Counseling
Cor. F-3 Protective Services

3.145 Criteria for Intake Decisions—Neglect and Abuse

State and local agencies responsible for intake services should develop and publish written guidelines and rules regarding intake decisions for complaints based on the jurisdiction of the family court over neglect and abuse.

In determining what disposition of a sufficient neglect and abuse complaint best serves the interests of the juvenile, the family, and the community, the following factors should be considered:

- **a. The seriousness of the alleged neglect or abuse and the circumstances in which it occurred;**
- **b. The age and maturity of the juvenile alleged to have been neglected or abused;**
- **c. The nature and number of contacts with the intake unit and the family court that the family has had;**
- **d. The outcome of those contacts including the services to which the family has been referred and the response to those referrals;**
- **e. The availability of appropriate services outside the juvenile justice system that do not involve removal of the juvenile from the home; and**
- **f. The willingness of the family to accept those services.**

Referral for services or dismissal should not be precluded for the sole reason that the person named in the complaint denies the allegations.

Sources:

None of the standards or model legislation reviewed include specific intake criteria for neglect and abuse cases. The recommended criteria are based on the definition of the jurisdiction of the family court over neglect and abuse contained in Standard 3.113 and draws on the criteria proposed for intake decisions in delinquency cases by Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Intake and Predisposition Investigative Services,* Standards 1.6 and 1.8 (tentative draft, 1977).

Commentary

This standard outlines the criteria to be considered in making the intake decision on complaints alleging that a juvenile has been neglected or abused as defined in Standard 3.113. No one criterion should be considered more important than any of the others, although protection of the juvenile from harm should be the primary concern. Accordingly, the term "seriousness" in paragraph (a) is intended to refer to the severity of the harm to the juvenile and to the likelihood and immediacy of any threatened harm. *See* Standard 3.113.

Like the provision on intake decisions in noncriminal misbehavior cases, the standard focuses on the family and is intended to channel as many cases as possible to services outside the juvenile justice system. Hence, among the listed factors to be considered in making the intake decisions are the family's prior contacts, if any, with the intake unit or the family court; the results of those contacts, e.g., dismissal of the complaint without referral to services, referral to services, cooperation of the family with those services, or the disposition imposed following adjudication of a petition; the availability of services offered by public or private agencies that are not components of the juvenile justice system; and the willingness of the family to cooperate with those services. *See* Standard 3.144.

As in the other standards on intake criteria, the *National Advisory Committee recommends the development of rules and guidelines governing the intake process in noncriminal misbehavior cases as an action that each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.* Such rules are essential, given the scope of the recommended jurisdiction over neglect and abuse and the inherent difficulty and complexity of intake decisions in neglect and abuse cases. Although the rules and guidelines should be issued by the agency responsible for intake, *see, e.g.,* Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs* (1976), the family court and the state and local agencies, departments, and programs affected by intake decisions should participate in their development.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody and Dispositional Records
1.534	Access to Child Abuse Records

1.54 Completeness of Records
1.55 Accuracy of Records
1.56 Destruction of Records
2.223 Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.244 Procedures following a Decisions to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.322 Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.342 Procedures for Referral to Intake (Nonlaw Enforcement Agencies)
3.113 Jurisdiction Over Neglect and Abuse
3.141 Organization of Intake Units
3.142 Review of Complaints
3.143 Criteria for Intake Decisions—Delinquency
3.144 Criteria for Intake Decisions—Noncriminal Misbehavior
3.146 Intake Investigations
3.147 Notice of Decisions
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.184 Dispositional Alternatives and Criteria—Neglect and Abuse

Prevention Strategies

Focal Point Social Institutions:
Cor. F-3 Crisis Intervention
Focal Point The Individual:
Cor. F-1 Individual and Family Counseling
Cor. F-3 Protective Services

3.146 Intake Investigation

The intake officer should be authorized to conduct a preliminary investigation in order to obtain information essential to the making of a decision regarding the complaint. In the course of the investigation, the intake officer should be authorized to:

- **a. Interview or otherwise seek information from the complainant, the victim, and any witnesses to the alleged conduct;**
- **b. Examine court records and the records of law enforcement and other public agencies; and**
- **c. Conduct interviews with the subject of the complaint and his/her family, guardian, or primary caretaker.**

Additional inquiries should not be undertaken unless the subject of the complaint and, if that person is a juvenile, his/her parent, guardian, or primary caretaker, provides informed consent.

The subject of a complaint and his/her family, guardian, or primary caretaker should have the right to refuse to participate in an intake interview, and the intake officer should have no authority to compel their attendance. In requesting an interview with the subject of a complaint and at the inception of that interview, the intake officer should explain that attendance is voluntary and that the subject of the complaint is entitled to be represented by an attorney and has the right to remain silent. At the inception of the interview, the intake officer should also explain the nature of the complaint, the allegations that have been made, the function of the intake process, the procedures to be used, and the alternatives available for disposing of the complaint. The family, guardian, or primary caretaker of the subject of the complaint should be similarly advised of the rights to which they are entitled, the nature of the complaint and the allegations therein, and the purpose, procedures, and possible consequences of the intake process.

Source:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standards 1.11, 1.12, and 1.13 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Probation Function*].

Commentary

Most states provide for a preliminary inquiry or investigation of a complaint, but few provide detailed guidelines governing the scope and procedures for such investigations. Among the exceptions are the Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs,* Sections 5.3 *et. seq.* (1976) [hereinafter cited as Florida, *Manual*], the California Department of Youth Authority, *Standards for the Performance of Probation Duties,* 57-58 (1970), and the Missouri Rules of Practice and Procedure in Juvenile Courts, Rules 3 and 4 (1975). In defining the limits and requirements for investigations resulting from the filing of delinquency, noncriminal misbehavior, and neglect and abuse complaints, Standard 3.146 seeks to strike a balance between the intake officer's need for information and the juvenile's and family's interest in avoiding unnecessary invasions of privacy. At the outset, the standard emphasizes that intake investigations should be limited to obtaining only that information "essential" for making the intake decision. This is in accord with the standard on this issue adopted by the IJA/ABA Joint Commission and with the realization expressed in provisions on records and information approved by both the IJA/ABA Joint Commission and the Standards and Goals Task Force on Juvenile Justice that "too much as well as too little information can inhibit the process of decision making." National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Commentary to Standard 28.1 (1976); *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Records and Information Systems (tentative draft, 1977). See* Standard 1.52.

Like the IJA/ABA Joint Commission provision, the standard permits but does not require interviews with the complainant, victim, if any, and witnesses to the alleged conduct. Such interviews will often be necessary to supplement the information contained in the complaint regarding the seriousness and circumstances of the alleged conduct. They can also help to correct the disregard for the complainant or victim which has often occurred in the past. These interviews, however, should not serve as substitutes for thorough investigations by law enforcement officers or other officials.

The standard also permits the intake officer to check court records and the records of law enforcement and other public agencies, such as schools or social service programs, for information essential to the intake decision and to interview the subject of the complaint and his/her family, guardian, or primary caretaker. *See* Standards 1.531-1.534. The term "family" is used to include the possibility of interviews with siblings of a child who has allegedly been neglected or abused or who is alleging a repeated misuse of parental authority, as well as with the parents of a juvenile subject to the delinquency or noncriminal misbehavior jurisdiction of the family court. Interviews with the subjects of complaints and their families, guardians, or primary caretakers are to be on a strictly voluntary basis. Refusal to participate in an intake interview should not preclude dismissal of the complaint. *See* Standards 3.143-3.145.

Because it is anticipated that intake will often lead to what is essentially a waiver of the accused's right to trial through referral to voluntary services, and because if a petition is filed, the accused's statements may be able to be used against him/her at least in some instances, it is critical that the subject of the complaint be as fully advised and informed as possible. Accordingly, the standard also recommends that intake officers explain the allegations in the complaint, the purpose, procedures and possible results of the intake process, and the alternatives to which the subjects of complaints are entitled. *See* Standards 3.132, 3.133, and 3.171. The parents of juveniles accused of engaging in noncriminal misbehavior and juveniles who have allegedly been neglected or abused, or whose parents, guardian, or primary caretaker are accused of misusing parental authority are also directly affected by intake decisions. Hence, the standard recommends that the intake officer explain the intake process to such persons at the inception of an interview and inform them at the time the interview is requested and at its inception that they cannot be compelled to participate and that they are entitled to be represented by counsel and to have an attorney appointed if they are unable to retain counsel for financial reasons. *See* Standards 3.132 and 3.133. These recommendations are similar to the interview procedures used in Florida in delinquency cases. See Florida, *Manual, supra* at Section 5.3 *et. seq.;* see also, IJA/ABA, *Probation Function, supra.*

Finally, the standard provides that the informed consent of the subject of the complaint and, if the subject is a juvenile, the informed consent of his/her parent, guardian, or primary caretaker should be obtained before any sources beyond those listed can be utilized. The subjects of complaints should be advised to consult with their attorney before consenting to a more extensive investigation. It is anticipated that few cases will require such additional inquiries and that the safeguards are necessary to avoid excessively wide-ranging probes into the reputation, behavior, and physical or mental health of individuals prior to an adjudication or even a finding of probable cause.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody and Dispositional Records
1.534	Access to Child Abuse Records
2.247	Procedures Applicable to the Interrogation of Juveniles
3.132	Representation by Counsel—For the Juvenile
3.133	Representation by Counsel—For the Parents
3.141	Organization of Intake Units
3.142	Review of Complaints
3.143	Criteria for Intake Decisions—Delinquency
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior
3.145	Criteria for Intake Decisions—Neglect and Abuse
3.171	Rights of the Parties
3.186	Predisposition Investigations

3.147 Notice of Decision

Upon determining that the allegations contained in a delinquency, noncriminal misbehavior, or abuse or neglect complaint should be submitted to the family court, the intake officer should send a written report to the family court section of the prosecutor's office explaining the reasons for the decision and recommended that a petition be filed. A copy of the report should be sent to the subject of the complaint and to his/her attorney. If the subject of the complaint is a juvenile, notice should also be sent to his/her parents, primary caretaker, or legal guardian.

Upon determining that a complaint should be dismissed, the intake officer should send a written report to the complainant explaining the decision and the reasons therefor and stating that the complainant may resubmit the complaint to the family court section of the prosecutor's office. The intake officer should send a copy of the report to the subject of the complaint and his/her attorney, and if the complaint is based on the jurisdiction of the family court over delinquency, to the family court section of the prosecutor's office.

Upon determining that the intake decision should be delayed and the subject of the complaint referred to services, the intake officer should send a written report advising the complainant of the determination, the reasons therefor, and the date by which final decision will be made.

Source:

See generally Institute of Judicial Administration/American Bar Association, Joint Commission on Juvenile Justice Standards, *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standard 1.15 (tentative draft, 1977).

Commentary

The standard requires the intake officer to advise the subject of the complaint of the intake decision and the reasons therefor without regard to the nature of the proceeding or to whether the decision is to submit to the court, dismiss the complaint, or refer for services. The standard differs from the IJA/ABA Joint Commission provision by requiring notification to the accused when the complaint is dismissed and by requiring notification to the attorney of the subject of the complaint. The notification of dismissal is to provide the subject of the complaint with proof that the charge is no longer pending. The addition of notification to the attorney is based on the broad entitlement to counsel provided by Standards 3.132 and 3.133 and is intended to assure that a juvenile receives and understands the intake officer's report.

The report to the family court section of the prosecutor's office described in the first paragraph of this standard follows from the recommendation in Standard 3.163 that the responsibility for reviewing the legal sufficiency of the complaint and for filing the petition be assigned to prosecutors. *See also* Standard 3.131. Notice of a decision not to file a delinquency complaint is also required to be sent to the prosecutor's office because of the special responsibilities traditionally placed on the prosecutor when a crime has been committed.

The standard also provides for notifying the complainant of the intake decisions and for permitting complainants to seek review of an intake officer's decision to dismiss a delinquency, noncriminal misbehavior or neglect and abuse complaint by resubmitting the complaint to the family court section of the prosecutor's office. Too often in the past the complainant or victim have been forgotten during the processing of a case except when their testimony has been needed. The provision for notice and prosecutorial review of intake decisions on request of the complainant provides a check on the intake officer's discretion, follows the current practice in many jurisdictions, *see, e.g.,* Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs,* Section 5.6.4 (1976), and is in accordance with the recommendations of the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 15.13 (1976), and U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 13 (1975).

However, as noted in Standards 3.142-3.145, objection by the complainant should not preclude dismissal of the complaint or referral of the subject of the complaint for services.

Regardless of the decision revealed, it is recommended that the intake officer's report include an explanation of the reasons that underlie it. This is part of the effort throughout these standards to make discretionary decisions more consistent and decision makers more accountable. *See, e.g.,* Standards 2.242-2.245, 2.342-2.343, 3.143-3.145, 3.151-3.158, 3.182-3.184, 3.188, 4.54, 4.71-4.73, and 4.81-4.82. Setting forth the reasons for intake decisions will facilitate review and will help to assure that recommended criteria and rules are being followed and to assess their effect. It will also facilitate a better understanding of the juvenile justice process by members of the public who become involved in a delinquency, noncriminal misbehavior, or neglect and abuse proceeding.

Related Standards

3.131 Representation by Counsel—For the State
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parents
3.141 Organization of Intake Units
3.142 Review of Complaints
3.143 Criteria for Intake Decisions—Delinquency
3.144 Iriteria for Intake Decisions—Noncriminal Misbehavior
3.145 Criteria for Intake Decisions—Neglect and Abuse
3.163 Decision to File a Petition

3.15 Detention, Release, and Emergency Custody

3.151 Purpose and Criteria for Detention and Conditioned Release—Delinquency

Written rules and guidelines should be developed by the agency responsible for intake services to govern detention decisions in matters subject to the jurisdiction of the family court over delinquency.

A juvenile accused of a delinquent offense should be unconditionally released unless detention in a secure or nonsecure facility or imposition of conditions on release is necessary to protect the jurisdiction or process of the family court; to prevent the juvenile from inflicting serious bodily harm on others or committing a serious property offense prior to adjudication, disposition, or appeal; or to protect the juvenile from imminent bodily harm.

In determining whether detention or conditioned release is required, an intake officer should consider:

- **a. The nature and seriousness of the alleged offense;**
- **b. The juvenile's record of delinquent offenses, including whether the juvenile is currently subject to the dispositional authority of the family court or released pending adjudication, disposition, or appeal;**
- **c. The juvenile's record of willful failures to appear at family court proceedings; and**
- **d. The availability of noncustodial alternatives, including the presence of a parent, guardian, or other suitable person able and willing to provide supervision and care for the juvenile and to assure his/her presence at subsequent proceedings.**

If unconditional release is not determined to be appropriate, the least restrictive alternative should be selected. Release should not be conditioned on the posting of a bail bond by the juvenile or by the juvenile's family, or on any other financial condition. A juvenile should not be detained in a secure facility unless the criteria set forth in Standard 3.152 are met. In no case should a juvenile be detained in a facility which he/she will have regular contact with adults accused or convicted of a criminal offense.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status* Standards 3.2 and 4.6 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Interim Status*]; National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Section 8.2(7)(b) (1973) [hereinafter cited as *Corrections*]; 42 U.S.C. 5633(a)(13) (Supp. 1979).

Commentary

Although exact figures are not yet available, it is estimated that approximately 15,000 juveniles are held in American jails and detention centers on any given day. *See* Law Enforcement Assistance Administration, *Children in Custody: Advance Report on the 1977 Census of Public and Private Juvenile Facilities* (1979); *Advanced Report on the National Jail Census: 1978* (1979); R. Sarri, *Under Lock and Key: Juveniles in Jails and Detention* (1974). Recent studies have shown that the rate of detention, the person making and reviewing the initial decision to detain or release a juvenile, and the reasons for detention vary greatly from jurisdiction to jurisdiction. Standards 3.151-3.158 seek to define and limit the purposes for holding juveniles in custody or conditioning their release pending adjudication, disposition, and appeal to clarify the responsibility for making and reviewing custodial decisions and to specify the criteria on which such decisions should be based. It is the intent of these standards that most juveniles subject to the jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse be released to the custody of their parents, guardian, or primary caretaker without imposition of any substantial restraints on liberty and, when this is not possible, that the least restrictive alternative be employed.

This standard, together with Standard 3.152, sets out the purposes for which restraints may be imposed on the liberty of a juvenile subject to the jurisdiction of the family court over delinquency and recommends criteria to be employed in determining whether such restraints are necessary. The term "detention" is intended to refer to placement of a juvenile in a facility or residence other than his/her home pending adjudication, disposition, or appeal. A secure facility is intended to denote a facility "characterized by physically restrictive construction with procedures designed to prevent the juveniles from departing at will." IJA/ABA, *Interim Status, supra* at Standard 2.10 *See* Standard 4.26. A single-family foster home is an example of a nonsecure facility. *See* Standards 4.25-4.252; *see also* Standard 4.27.

The initial recommendation in Standard 3.151 is that written rules and guidelines be developed in order to promote consistency in detention and release decisions. *See, e.g.,* Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs,* Sections 5.4-5.4.8 and 5.5-5.5.1 (1976). *The National Advisory Committee recommends the development of rules and guidelines governing decisions regarding detention and release of juveniles in delinquency cases as an action that states can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.* Although the guidelines are to be promulgated by the agency responsible for intake services of the family court, the police and other affected components of the juvenile justice system should participate in their development. *Cf.* Standards 3.143-3.145. Consolidation of administrative control over the intake and detention decision making in one agency is recommended to enhance accountability and reduce the confusion and inconsistency that have occurred when several agencies, departments, or units have been authorized to make initial detention/release decisions. However, decisions to detain should be subject to mandatory review by a family court judge within twenty-four hours and the terms of release should be subject to judicial review on the request of the juvenile or the juvenile's family. *See* Standards 3.155 and 3.156.

Although emphasizing that most juveniles should be released without the imposition of substantial restraints on their liberty, the standard indicates that such restraints may be imposed to prevent a juvenile from fleeing or being taken out of the jurisdiction or to protect the juvenile or the community. *See, e.g.,* National Council on Crime and Delinquency, *Standards and Guides for Detention of Children and Youth* (1961); National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act,* Section 14 (1968); U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 20 (1975); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.7 (1976) [hereinafter cited as *Report of the Task Force*]; IJA/ABA, *Interim Status, supra.* The criteria set forth in Standard 3.152 are intended to limit the circumstances in which juveniles may, in furtherance of these purposes, be placed in secure detention.

Although preventive detention has been a highly controversial issue in adult criminal cases, the imposition of high bail has often been used to achieve the same purpose. Preventive detention of juveniles, in one form or another, is allowable under the juvenile codes of a substantial number of states and has been approved by the National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* 298-299 (1973) [hereinafter cited as *Courts*] (to protect the person or properties of others); the *Model Act for Family Courts, supra* (release presents a clear and substantial threat of a serious nature to the person or property of others); the *Uniform Juvenile Court Act* (to protect the person and property of others); *Report of the Task Force, supra* (to prevent infliction of bodily harm on others or intimidation of any witness); and the IJA/ABA, *Interim Status, supra* (prevent infliction of serious bodily harm on others). *But see Corrections, supra* at Section 8.2(7), Because of the difficulty of predicting future conduct, the adverse impact of incarceration on a juvenile, and the cost of detention, the standard recommends that secure detention should be an available alternative in only certain specified situations. In addition, juveniles can only be confined for their own protection in a secure facility if they request such confinement in writing "in circumstances that present an immediate danger of serious physical injury." *See,* IJA/ABA, *Interim Status, supra* at Standard 6.7(a).

To provide further guidance, the standard suggests four sets of considerations relevant to the decision regarding what, if any, restraints should be imposed. These relate directly to the purposes enumerated above and to the criteria for secure detention discussed in Standard 3.152. *See also* Standard 3.143. In order to assure that the juvenile's rights are protected, Standard 3.155 provides that the detention hearing must include a judicial determination of probable cause, and Standard 3.158 recommends weekly review of decisions to continue detention to assure that confinement is still necessary.

Finally, the standard, in accordance with the position adopted by the President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 36 (1976); *Report of the Task Force,* Standard 12.12; and IJA/ABA, *supra* at *Interim Status, supra,* recommends that a juvenile's release not be conditioned on the posting of a bail bond or any other financial condition. As stated in the commentary to the Task Force provision:

> A juvenile is unlikely to have independent financial resources which he could use to post bail. Even if he did have such resources, he could not sign a binding bail bond because a minor is not ordinarily liable on a contract. Consequently, the youth would have to depend on his parents or other interested adults to post bond in his behalf. If an adult posted bond, the youth's incentive to appear would arguably be defeated, since he would not personally forfeit anything upon nonappearance. On the other hand, a parent might refuse to post bail and force the youth to remain in detention. Finally, financial conditions discriminate against indigent juveniles and their families.

State practices with regard to bail vary widely. A substantial number, however, by statute or decision, provide accused delinquents with a right to bail. It was the conclusion of the National Advisory Committee that the recommended procedures are more in keeping with the purposes of the family court than bail, will more adequately protect juveniles against unwarranted restraints on their liberty, and will not be subject to the abuses and injustices that have occurred in the adult criminal justice system as a result of reliance on bail and other financial conditions for release. *See Courts, supra* at Section 4.6; ABA, *Standards Relating to Pretrial Release,* Section 1.2(c) (approved draft, 1969).

Finally, in accord with the *Juvenile Justice and Delinquency Prevention Act,* the standard would prohibit placement of a juvenile in any facility, secure or nonsecure in which the juvenile would be commingled with accused or convicted adult criminal offenders. 42 U.S.C. §5633(a)(13) (Supp. 1979).

Related Standards

2.231 Criteria for Taking Juveniles Into Custody—Delinquency
3.152 Criteria for Detention in Secure Facilities—Delinquency
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.155 Initial Review of Detention Decisions
3.156 Review of Conditions of Release
3.158 Review Modification and Appeal of Detention
3.171 Rights of the Parties
4.24 Community Correctional Facility
4.25 Foster Homes
4.26 Detention Facilities
4.27 Shelter Care Facilities

3.152 Criteria for Detention in Secure Facilities—Delinquency

Juveniles subject to the jurisdiction of the family court over delinquency should not be detained in a secure facility unless:

- **a. They are fugitives from another jurisdiction;**
- **b. They request protection in writing in circumstances that present an immediate threat of serious physical injury;**
- **c. They are charged with murder in the first or second degree;**
- **d. They are charged with a serious property crime or a crime of violence other than first or second degree murder which if committed by an adult would be a felony, and**
  - **i) They are already detained or on conditioned release in connection with another delinquency proceeding;**
  - **ii) They have a demonstrable recent record of willful failures to appear at family court proceedings;**
  - **iii) They have a demonstrable recent record of violent conduct resulting in physical injury to others; or**
  - **iv) They have demonstrable recent record of adjudications for serious property offenses; and**
- **e. There is no less restrictive alternative that will reduce the risk of flight, or of serious harm to property or to the physical safety of the juvenile or others.**

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standards 6.6 and 6.7 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Interim Status*]

Commentary

This standard describes the circumstances in which a juvenile subject to the jurisdiction of the family court over delinquency may be detained in a secure facility. It is intended to limit secure detention to those instances in which no less restrictive alternative is sufficient to protect the juvenile, the community, or the jurisdiction of a family court.

Under paragraph (a), juveniles who have fled from a jurisdiction in which a delinquency complaint or petition is pending against them may be detained in a secure facility unless nonsecure detention, conditioned or unconditioned release would be sufficient to significantly reduce the risk of flight.

Paragraph (b) recommends that protective custody be permitted only on the juvenile's written request coupled with circumstances that indicate that the juvenile is in immediate danger of serious physical injury. Such danger is intended to be more than being on the streets at night or the possibility that the juvenile may be harmed if he/she continues to get into trouble. *See* IJA/ABA, *Interim Status, supra* at Commentary to Standard 5.7. Protective custody provisions have sometimes functioned as convenient excuses for holding a child in custody because of other reasons or the lack of less restrictive facilities. Such a practice would not be authorized under the standard. If the juvenile is endangered by his/her parents, guardian, or primary caretaker in one of the ways set forth in Standard 3.113, a neglect or abuse action may be appropriate.

Paragraph (c) recommends that secure detention be permitted but not required when a juvenile is charged with first or second degree murder. This provision is somewhat analogous to the statutes in some states prohibiting adults charged with a capital offense from being released on bail.

Under paragraph (d), commission of a crime of violence short of murder but still equivalent to a felony, e.g., manslaughter, rape, or aggravated assault, is not in itself sufficient to detain a juvenile. The juvenile must also have, for example, a demonstrable record of committing violent offenses that result in physical injury to others or be on conditioned release or in detention pending adjudication, disposition, or appeal of another delinquency matter. Similarly, being charged with a serious property offense, e.g., burglary in the first degree or arson, must be coupled with a demonstrable record of adjudications for serious property offenses. The term "demonstrable record" is not intended to require introduction of a certified copy of a prior adjudication order, but should include more than allegations of prior misconduct. In order to protect the juvenile's rights and to assure that the decision to detain a juvenile in a secure facility was made in accordance with this standard and Standard 3.151, related standards recommend that a detention hearing be held before a family court judge within twenty-four hours and, if detention is continued, that it be subject to judicial review every seven days. *See* Standards 3.155 and 3.158.

The standard differs significantly from the IJA/ABA, *Interim Status, supra* provisions on which it is based in four ways. First, it urges that the proposed strict criteria be limited to detention in secure facilities. Second, in view of the large number of burglaries and other serious property offenses committed by some juveniles, it does not restrict detention to juveniles accused of committing violent crimes. Third, the IJA/ABA Joint Commission provision would limit the violent felonies other than murder, which would warrant secure detention, to those for which commitment to a secure correctional institution is likely. This added factor is omitted because it involves the type of prediction that the other criteria seek to avoid and because it may have a tendency to become a self-fulfilling prophecy. Fourth, the standard does not restrict the violent or serious property offenses, which would make a juvenile eligible for secure detention, to those occurring while the juvenile is subject to the jurisdiction or dispositional authority of the family court. However, the standard, like those approved by the IJA/ABA Joint Commission, is intended to prevent detention of juveniles in secure facilities because of the lack of less restrictive alternatives; because of the unavailability of a parent, relative, or other adult with substantial ties to the juvenile who is willing and able to provide supervision and care; or in order to provide "treatment." *See also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.7 (1976).

As noted in Standard 3.151, even juveniles placed in secure detention should not be housed in a facility in which they will have regular contact with adults accused or convicted of committing a crime. *See* Standard 4.26; 18 U.S.C.§5633(a)(13) (Supp. 1979).

Related Standards

1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.56	Destruction of Records
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.155	Initial Review of Detention Decisions
3.158	Review, Modification, and Appeal of Detention Decisions
3.161	Case Processing Time Limits
3.171	Rights of the Parties
4.2194	Security (in High Security Units)
4.26	Detention Facilities

3.153 Criteria and Procedures for Detention and Release—Noncriminal Misbehavior

Persons subject to the jurisdiction of the family court over noncriminal misbehavior should not be detained in secure detention facilities. A juvenile subject to that jurisdiction should be placed in a foster home or shelter facility pending adjudication, disposition, or appeal only when the juvenile is in danger of imminent bodily harm and no less coercive measure will reduce the risk or when there is no person willing and able to provide supervision and care.

Written rules and guidelines should be developed by the agency responsible for intake services to govern detention and release decisions.

In determining whether detention or conditioned release is required, the intake officer should consider:

- **a. The nature and seriousness of the alleged conduct;**
- **b. The juvenile's age and maturity;**
- **c. The nature and number of contacts with the intake unit or family court that the juvenile and his/her family has had;**
- **d. The outcome of those contacts; and**
- **e. The presence of a parent, guardian, or other adult able and willing to provide supervision and care for the juvenile.**

If unconditional release is determined not to be appropriate, the least restrictive alternative should be selected. When it is necessary to provide temporary custody for a juvenile pending a noncriminal misbehavior proceeding, every effort should be made to provide such custody in the least restrictive setting possible and to assure that contact with juveniles detained under Standard 3.151 or who have been adjudicated delinquent is minimized. In no case should a juvenile be placed in a facility in which he/she has regular contact with adults accused or convicted of a criminal offense.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.8 (1976) [hereinafter cited as *Report of the Task Force*]; 18 U.S.C. §5633(a)(12) (1978).

Commentary

Although precise national data is not yet available, a number of studies have estimated that from 20 percent to over 50 percent of juveniles detained prior to disposition are status offenders. *See* J. Poulin, J. Levitt, T. Young, and D. Puppenfort, *Juveniles in Detention Centers and Jails: An Analysis of State Variations During the Mid 1970s* (1980); Airessohn and Gonion, "Reducing the Juvenile Detention Rate," 24 *Juvenile Justice* 28 (1973); Sumner, "Locking Them Up," 17 *Crime and Delinquency* 168 (1971); R. Sarri, *Under Lock and Key: Juveniles in Jails and Detention,* 20 (1974); National Council on Crime and Delinquency, "Survey on Corrections in the United States" reprinted in President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections* (1967). As with detention of juveniles in general, the reasons for and rates of detention of juveniles accused of engaging in noncriminal misbehavior vary widely among and within states, although as noted by the *Report of the Task Force* ". . . detention is presently the most convenient method for the pre-adjudicatory handling of juveniles exhibiting 'status' types of behavior because other resources . . . are either not available or available only on a very selective basis." *Report of the Task Force, supra* at Commentary to Standard 12.8. Although the number and percentage of such children who are detained appear to be declining and are expected to continue to do so, in part due to the implementation of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. Sections 5601, 5633(a)(12) (Supp. 1979) there is still a need to define the circumstances and conditions under which juveniles subject to the jurisdiction of the family court over noncriminal misbehavior may be detained *See* Standard 3.112.

The standard makes clear, at the outset, that persons accused of noncriminal misbehavior—juveniles or adults alleged to have repeatedly misused their lawful parental authority—should never be placed in a secure detention center or jail. *See* Juvenile Justice and Delinquency Prevention Act of 1974, *supra; Report of the Task Force, supra.* In most cases, such persons should be released without conditions upon their promise to appear. However, the standard provides that juveniles may be placed in a foster home or shelter facilities in two limited situations. The first is when the juvenile is in danger of imminent bodily harm and no alternative to shelter care can reduce the risk. The second is when there is no one able and willing to provide supervision and care for the juvenile, and the juvenile is not able to provide adequately for his/her own needs (food, shelter, and clothing) without such care and supervision. Foster homes and shelter facilities are discussed in Standards 4.25-4.252, and 4.27.

Unlike Standard 3.152, the standard does not require a written request for protection by the juvenile in circumstances that present an immediate threat of physical injury, because protection for children in noncriminal misbehavior cases can and should be able to be provided in a nonsecure facility, and it seems unrealistic to expect runaways, truants, and other children who are in conflict with their families to request protection.

The Task Force provision from which this standard is adopted appears to limit use of shelter care to the first of the enumerated situations. However, the Commentary to the Task Force Standard indicates that it is intended to include "a young child who continually runs away from home or other residential placement regardless of what services are offered or provided and is therefore exposing him/herself to the myriad of harm that can be befall a young child unsupervised and unprotected on a city street." It appears more appropriate to address this problem directly, rather than to premise nonrelease on predictions of potential danger. The IJA/ABA Joint Commission's standards do not provide for family court jurisdiction over most instances of noncriminal misbehavior. However, juveniles who run away and do not consent to be transported home may be taken to a temporary nonsecure residential facility. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior*, Standards 2.1 and 3.1 (tentative draft, 1977).

As in the provisions concerning intake and Standards 3.151 and 3.154, the standard recommends that written rules and guidelines be promulgated by the agency responsible for intake services to promote consistency in detention/release decisions. The family court, the police, and other affected agencies should participate in the development of such regulations. *The National Advisory Committee recommends the development of rules and guidelines governing release and detention decisions in noncriminal misbehavior cases as an action that states can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

In deciding whether detention or any release conditions are necessary, the standard directs the intake officer to select the least restrictive alternative consistent with a series of criteria similar to those to be utilized in intake decisions, see Standard 3.144; *see also* Standard 3.151

The standard emphasizes that if residential facilities are used, they should be as normal an environment as possible, and recommends that there be no regular contact between juveniles alleged to have engaged in noncriminal misbehavior and accused or convicted adult offenders, and that contact between accused or adjudicated delinquency offenders and juveniles alleged to have engaged in noncriminal misbehavior should be minimized in order to distinguish as much as possible the consequences of noncriminal and criminal behavior.

Related Standards

1.531	Access to Police Records
1.532	Access to Judicial Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositonal Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.56	Destruction of Records
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies
3.112	Jurisdiction Over Noncriminal Misbehavior
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.155	Initial Review of Detention Decisions
3.156	Review of Conditions of Release
3.158	Review Modification and Appeal of Detention Decisions
3.161	Case Processing Time Limits
3.171	Rights of the Parties
4.25	Foster Homes
4.27	Shelter Care Facilities

3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases

Written rules and guidelines should be developed by the agency responsible for intake services to govern imposition of protective measures prior to adjudication or disposition of matters submitted pursuant to the jurisdiction of the family court over neglect and abuse.

In determining whether to impose conditions to protect a juvenile alleged to be neglected and abused or to place the juvenile in emergency custody, the intake officer should consider: the nature and seriousness of the alleged neglect or abuse and the circumstances in which it occurred; the juvenile's age and maturity; the nature and number of contacts with the intake unit and the family court which the family has had; and the presence of a parent, guardian, relative, or other person with whom the juvenile has substantial ties, willing and able to provide supervision and care.

Conditions should not be imposed on a juvenile's parents, guardian, or primary caretaker unless necessary to protect the juvenile against any of the harms set forth in Standard 3.113(b)-(i).

Juveniles should not be placed in emergency custody unless:

a. They are unable to care for themselves and there is no parent, guardian, relative, or other person willing and able to provide supervision and care;

b. There is a substantial risk that they would suffer one of the forms of neglect or abuse set forth in Standard 3.113(b)-(h) if they were returned home;

c. There is a substantial risk that they will fail to or be prevented from appearing at any family court proceeding resulting from the filing of the complaint; and

d. There is no other measure that will provide adequate protection.

When in accordance with the above criteria and factors it is determined that emergency custody is required every effort should be made to provide such custody in the most homelike setting possible. Juveniles subject to the neglect and abuse jurisdiction of the family court should not be placed in detention or correctional facilities or facilities housing juveniles or adults accused of or found to have committed a delinquent or criminal offense.

Sources:

See generally U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 20 (1975); *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 4.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*].

Commentary

This standard sets forth the factors and circumstances that an intake officer should consider in deciding whether protective measures should be imposed pending adjudication and disposition of a neglect and abuse case. As in the other standards dealing with discretionary decisions by the intake officer, it urges that written rules and guidelines be issued by the agency responsible for intake services to promote consistency. *See* Standards 3.143-3.145, 3.151, and 3.153; *see, e.g.,* Florida Department of Health and Rehabilitative Services, *Manual: Intake for Delinquency and Dependency Juvenile Programs,* Section 6.7 (1976). The family court, police, child protective services agency, and other state and local agencies affected by the imposition of protective condition or the placement of children alleged to have been neglected or abused in emergency custody should participate in the development of such regulations. *The National Advisory Committee recommends the development of rules and guidelines governing decisions to impose protective measures in neglect and abuse cases as an action that states can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.*

The factors listed in the second paragraph of the standard are intended to serve as guides for the decision-making and rule-making processes. They are similar to those that the intake officer should consider in making the intake decision. *See* Standard 3.145.

Conditions should only be imposed on a juvenile's parents or parental surrogates when necessary to protect the child

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from any of the harms specified in Standard 3.113(b)-(i), pending determination and disposition of the case. Any conditions imposed should be addressed to alleviating immediate dangers—e.g., assuring that the child receives prescribed medication or that care is provided while the parent is away—and not to resolving any underlying family conflicts or problems.

Because removal of a child from his/her house, even on an emergency basis, is often emotionally "very painful" to the child, J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* 20, (1973), and because the emphasis throughout these standards on the use of the least intrusive form of intercession that is appropriate, *cf.* Standards 3.143-3.145, 3.151-3.153, and 3.182-3.184, the standard recommends that a juvenile alleged to have been neglected or abused should not be placed in emergency custody unless no other alternative will provide adequate protection. *Accord,* IJA/ABA, *Neglect, supra;* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.9 (1976) [hereinafter cited as *Report of the Task Force*]. *See* J. Areen, "Intervention Between Parent and Child: A Reappraisal of the State's Role in Neglect and Abuse Cases," 63 *Geo. L. J.* 887, 919 (1975). Under the standard, juveniles could be placed in emergency custody if they are in immediate danger in any of the ways specified in Standard 3.113, with one exception. Because preventing a child from obtaining the education required by law, Standard 3.113(i), does not imperil his/her physical or emotional health, it does not warrant removing the child from the home. The standard would also permit emergency custody when it is likely that the juvenile will flee, will be taken from the jurisdiction, or otherwise prevented from appearing at any of the proceedings.

The *Model Act for Family Courts, supra* permits juveniles to be placed in emergency custody if there is no adult able and willing to provide care, if release would present a serious threat of substantial harm, and "if the child has a history of failing to appear for hearings." The provision adopted by the IJA/ABA Joint Commission is more limited. It stipulates that a child should not be held in emergency custody unless return home would create "an imminent substantial risk of death or bodily injury to the child," no adequate safeguards other than removal are available, and the conditions of emergency custody adequately safeguard the child's wellbeing. IJA/ABA *Neglect, supra.* The *Report of the Task Force, supra,* would limit removal even further, allowing emergency custody "only when it is necessary to protect the child and the parents or other adult caretakers are unwilling or unable to protect the child from such injury."

When juveniles are placed in emergency custody, they should be placed in as homelike a setting as possible, in order to reduce the impact of removal to the greatest extent possible. However, such placement should adequately protect the juvenile and provide for the juvenile's physical and emotional needs. *See* Standards 4.25-4.252 as noted in the Commentary to *Report of the Task Force, supra* at Standard 12.9:

> It is obviously pointless to remove a child from a dangerous home situation unless we can assure that he will be adequately protected in the temporary out-of-home placement.

Ordinarily, forestry camps and other remote facilities should not be utilized. Parental visits should be permitted and encouraged. *See Report of the Task Force, supra; IJA/ABA Neglect, supra* at Standard 4.2. To assure protection without otherwise unnecessary security measures and to avoid treating nondelinquent juveniles in the same manner as those accused of committing or found to have committed a criminal offense, juveniles alleged to be neglected and abused should not be commingled with alleged or adjudicated delinquents or adult offenders. 18 U.S.C. §5633(a)(12) (Supp. 1979).

Decisions to place a child in emergency custody should be subject to judicial review within twenty-four hours of the time at which the juvenile was taken into custody. *See* Standard 3.157. Protective measures short of emergency custody should be subject to review by the family court upon request of the juvenile's parents, guardian, or primary caretaker. *See* Standard 3.156.

Related Standards

1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Disposition Records
1.534	Access to Emergency Custody Records
1.54	Completeness of Records
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.244	Procedures Following Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245	Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.33	Criteria for Intaking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.343	Procedures Upon Taking a Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344	Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.145	Criteria for Intake Decisions—Neglect and Abuse
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.153	Criteria for Detention and Release—Noncriminal Misbehavior
3.156	Review of Conditions of Release
3.157	Initial Review of Emergency Custody Decisions
3.158	Review, Modification, and Appeal of Detention Decisions
3.161	Case Processing Time Limits
3.171	Rights of the Parties
4.25	Foster Homes
4.27	Shelter Facilities

See also in the Prevention Chapter,
Focal Point The Individual:
Cor. F-3 Protective Services

3.155 Initial Review of Detention Decisions

Upon determining that the subject of a delinquency complaint should be detained, the intake officer should file a written notice with the family court together with a copy of the complaint. The notice should specify the terms of detention, the basis for imposing such terms, and the less restrictive alternatives, if any, that may be available. A copy of the notice should be given to the family court section of the prosecutor's office, the juvenile, and the juvenile's attorney and parents, guardian, or primary caretaker.

Unless the juvenile is released earlier, a detention hearing should be held before a family court judge no more than twenty-four hours after the juvenile has been taken into custody. At that hearing, the state should be required to establish that there is probable cause to believe that a delinquent offense was committed and that the accused juvenile committed it. If probable cause is established, the court should review the necessity for continued detention. Unless the state demonstrates by clear and convincing evidence that continued secure or nonsecure detention is warranted, the court should place the juvenile in the least restrictive form of release consistent with the purposes and factors set forth in Standard 3.151.

At the inception of the detention hearing, the judge should assure that the juvenile understands his/her right to counsel, should appoint an attorney to represent the juvenile if the juvenile is not already represented by counsel, and meets the eligibility requirements set forth in Standard 3.132.

If detention is continued, the family court judge should explain, on the record, the terms of detention and the reasons for rejecting less restrictive alternatives. If the terms differ from those imposed by the intake officer, a written copy of those terms should be given to the juvenile and the juvenile's attorney and parents, guardian, or custodian.

No detention decision should be made on the basis of a fact or opinion that has not been disclosed to counsel for the state and for the juvenile.

The same procedures and time limits should apply to the matters under the jurisdiction of the family court over noncriminal misbehavior, except that the terms of detention in noncriminal misbehavior cases should be assessed against the criteria set forth in Standard 3.153.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.11 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standards 4.3 and 7.7-7.8, and *Standards Relating to Dispositional Procedures,* Standard 2.4(a) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Interim Status,* and IJA/ABA, *Dispositional Procedures,* respectively].

Commentary

This standard recommends that the decision to detain the subject of a complaint filed pursuant to the jurisdiction of the family court over delinquency and noncriminal misbehavior should be judicially reviewed within twenty-four hours of the time at which the subject of the complaint was taken into custody. It recommends further that this review take place during a hearing at which the detained person is entitled to counsel and at which the state is required to prove that there is probable cause to believe the allegations in the complaint are true.

All of the recent national standards-setting or model legislative efforts recommend that there be an opportunity for judicial review of detention decisions. U.S. Department of Health, Education and Welfare, the *Model Act for Family Courts,* Section 23 (1975); the *Uniform Juvenile Court Act,* Section 17 (National Conference of Commissioners for Uniform State Laws, 1968); the President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 37 (1967); and the National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* Section 14.2 (1973), as well as the IJA/ABA, *Interim Status, supra,* and the *Report of the Task Force, supra,* recommend that such hearings be mandatory. Most states provide for, and many require, a detention hearing.

Provisions regarding the time period in which such hearings should be held vary. All but one of the groups recommending a mandatory detention hearing propose that such hearings be held within forty-eight hours of arrest. The *Uniform Juvenile Court Act, supra,* sets a 72-hour limit. State provisions range from no specifications as to time, to the requirements in at least two jurisdictions that detention hearings be held within twenty-four hours.

Determining what time limit should be applied involves balancing two sets of competing interests. On the one hand, the intake officer needs time to gather the information necessary to make the intake and detention decisions and to prepare the necessary paper work, *see* Standards 3.143, 3.144, and 3.151, and the family court section of the prosecutor's office must have some opportunity to prepare the evidence and contact the witnesses for the probable cause determination at the detention hearing. On the other hand, there is the harsh impact that even brief detention may have on a juvenile, especially when he/she is placed in a secure facility, and the corresponding need to assure as quickly as possible that such detention is necessary. Although it is recognized that the 24-hour period (including holidays and weekends) proposed in this standard will cause some difficulty in those few cases in which it is necessary to detain a juvenile, especially in rural areas, the cost of detention both to the juvenile and the taxpayers warrants such a stringent prescription.

Procedurally, the standard proposes that intake officers prepare a notice as soon as possible after making the decision to detain that explains the restraints imposed, the less restrictive alternatives that were rejected, and the reasons for rejecting them. This explanation should be in terms of the purposes and criteria set forth in Standard 3.151. Together with the similar explanation to be provided by the judge in the event detention is continued, it is part of the effort throughout these standards to make discretionary decisions more consistent and open to review. *See., e.g.*, Standards 2.242-2.245, 2.342-2.343, 3.143-3.145, 3.182-3.184, 3.188, 4.54, 4.71-4.73, and 4.81-4.82. The notice, together with a copy of the complaint, is to be filed with the family court in order to provide a basis for the hearing and given to the parties in order to provide each side at least some opportunity to prepare. This procedure is comparable to that recommended by the IJA/ABA, *Interim Status, supra.*

As noted earlier, the standard recommends that the judge must find that there is a legally sufficient basis on which to hold the juvenile before reviewing whether detention is necessary. This is consistent with the Supreme Court's decision in *Gerstein v. Pugh*, 420 U.S. 103 (1975). Unlike the Task Force provision, the standard does not bar the use of hearsay to show probable cause. This follows the majority view in *Gerstein* that the full panoply of adversary procedures need not apply to most probable cause determinations. Moreover, given the brief time available, it would be impractical to require the state to present a full slate of witnesses. However, the standard, together with Standard 3.171, goes beyond *Gerstein* in recommending that the subject of the delinquency or noncriminal misbehavior complaint be afforded the right to counsel, to be present at the detention hearing, to present evidence, and to call and cross-examine witnesses. Although these procedures do "freight" juvenile proceedings with "trial-type procedures," *Moss v. Weaver*, 525 F.2d 1258 (5th Cir., 1976), the significance of the detention decision for the juvenile makes such safeguards essential. The opportunity for a probable cause determination for juveniles not held in custody is recommended in Standard 3.165.

The standard provides further that no information relied upon in deciding whether detention is to be continued should be withheld from the attorney for the state, the attorney for the juvenile, and in noncriminal misbehavior proceedings the attorney for the juvenile's parents, guardian, or primary caretaker. *See* Standards 3.131-3.133. This is in keeping with the recommendations for broad disclosure by all participants of the proceedings throughout these standards. *See* Standards 3.167 and 3.187. Whether potentially harmful information should be revealed to the juvenile or the juvenile's parents or parental surrogate, is left to the discretion of counsel.

The procedures for review of decisions to place juveniles alleged to have been neglected or abused in emergency custody are discussed in Standard 3.157.

Related Standards

3.147	Notice of (Intake) Decision
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152	Criteria for Detention in Secure Facilities—Delinquency
3.153	Criteria for Detention and Release—Noncriminal Misbehavior
3.156	Review of the Conditions of Release
3.157	Initial Review of Emergency Custody Decisions
3.158	Review, Modification, and Appeal of Detention Decisions
3.161	Case Processing Time Limits
3.165	Determination of Probable Cause
3.171	Rights of the Parties

3.156 Review of the Conditions of Release

Upon determining that the subject of a delinquency complaint should be released, and what, if any, conditions should be imposed on that release, the intake officer should file a written notice with the family court together with a copy of the complaint. The notice should specify the conditions of release, the basis for imposing such conditions, and the less restrictive alternatives, if any, that may be available. A copy of the notice should be given to the family court section of the prosecutor's office, the juvenile, and the juvenile's attorney and parents, guardian, or custodian.

If requested by the juvenile or by the juvenile's family, a hearing should be held to review the conditions of release and to assure that they constitute the least restrictive form of release consistent with the purposes and criteria set forth in Standard 3.151.

At the inception of the hearing, the judge should assure that the juvenile understands his/her right to counsel and should appoint an attorney to represent the juvenile if the juvenile is not already represented by counsel and meets the eligibility requirements set forth in Standard 3.132.

At the conclusion of the hearing, the family court judge should explain, on the record, the conditions of release to be imposed or continued and the reasons for rejecting any less restrictive alternatives. If the conditions differ from those imposed by the intake officer, a written copy of those conditions should be given to the juvenile and the juvenile's attorney and parents, guardian, or primary caretaker.

No decision should be made on the basis of a fact or opinion that has not been disclosed to counsel for the state, for the juvenile, and for the juvenile's parents, guardian, or primary caretaker.

The same procedures should apply to matters subject to the jurisdiction of the family court over noncriminal misbehavior and neglect and abuse. In noncriminal misbehavior cases the conditions of release should be assessed against the criteria in Standard 3.153. In neglect and abuse cases, conditions imposed on a juvenile's parents, guardian, or primary caretaker in order to protect the juvenile should be assessed against the criteria set forth in Standard 3.154.

Sources:

None of the standards examined address review of the terms of release. The standard is based on the recommendations regarding review of detention decisions of the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.11 (1976); *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standards 4.3 and 7.8, and *Standards Relating to Dispositional Procedures,* Standard 2.4(a) (tentative draft, 1977).

Commentary

As noted in the Commentary to Standard 3.151, it is anticipated that it will not be necessary to detain or condition the release of most juveniles accused of committing a delinquent offense or engaging in noncriminal misbehavior and most adults accused of misusing their parental authority. It is further anticipated that in most cases in which release is subject to conditions, and in most neglect and abuse cases in which conditions are imposed to protect the juvenile, the conditions will be readily agreed to by the juvenile and the family and will not significantly restrain their liberty. However, in a few cases, juveniles and/or their families may feel that the conditions are or have become unnecessarily restrictive or that their agreement was coerced. In keeping with the family court's authority to review the actions of executive agencies, *see* Standard 3.121, and in order to assure that undue restraints are not imposed by the intake officers on the liberty of persons subject to the jurisdiction and that such persons perceive that they are being treated fairly, the standard recommends that the subjects of delinquency and noncriminal misbehavior complaints and their parents, guardian, or primary caretaker be able to secure judicial review of the terms of release, and that juveniles alleged to be neglected and abused and their families be able to secure judicial review of the protective conditions which have been imposed.

The proposed procedures are identical to those set forth in Standards 3.155 and 3.157 except that the state is not required to establish probable cause. This requirement is omitted because most conditions will not be so burdensome as to constitute a "significant restraint on liberty." *See Gerstein v. Pugh,* 420 U.S. 103, 114 (1975). However, Standard 3.165 recommends that a hearing to determine the probable cause should be held upon the request of the person named therein.

A review hearing may be requested at any time prior to implementation of the dispositional order or during a stay pending appeal when conditions on continued liberty are imposed. Judicial review of the terms of release is not made mandatory in order to avoid placing a time-consuming and unnecessary burden on the family court.

Related Standards

3.147 Notice of (Intake) Decision
3.151 Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.155 Initial Review of Detention Decisions
3.171 Rights of the Parties

3.157 Initial Review of Emergency Custody Decisions

Upon determining that a juvenile subject to the jurisdiction of the family court over neglect and abuse should be retained in emergency custody, the intake officer should file a written notice with the family court together with a copy of the complaint. The notice should specify the basis for retaining the juvenile in emergency custody, and the less restrictive alternatives, if any, that may be available. A copy of the notice should be given to the family court section of the prosecutor's office, the juvenile, and the juvenile's attorney and parents, guardian, or primary caretaker.

Unless the juvenile is returned home earlier, a hearing should be held before a family court judge no more than twenty-four hours after the juvenile has been taken into custody. At that hearing, the state should be required to establish that there is probable cause to believe that the juvenile has been neglected or abused in any of the ways set forth in Standard 3.113. If probable cause is established, the court should determine whether under the criteria set forth in Standard 3.154, continued emergency custody is necessary to protect the juvenile from any of the harms or risks of harm specified in Standard 3.113(a)-(h).

At the inception of the hearing, the judge should assure that the parties understand their right to counsel and should appoint an attorney to represent a party who is not already represented by counsel and meets the eligibility requirements set forth in Standard 3.132 or 3.133.

If emergency custody is continued, the judge should explain, on the record, the reasons for rejecting less restrictive alternatives. No decision should be made on the basis of a fact or opinion that has not been disclosed to counsel for the state, for the juvenile, and for the juvenile's parents, guardian, or primary caretaker.

Sources

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standards 4.3 and 5.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.11 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standards 4.3 and 7.7, *Standards Relating to Dispositional Procedures,* Standard 2.4(a) (tentative drafts, 1977).

Commentary

This standard recommends that the decision to place in emergency protective custody a juvenile alleged to have been neglected or abused should be reviewed within twenty-four hours of the time at which the juvenile was taken into custody. Like the standard on review of detention decisions, it recommends further that this review take place at a hearing at which the juvenile and the juvenile's parents, guardian, or primary caretaker are entitled to counsel, and at which the state is required to prove that there is probable cause to believe that the allegations contained in the complaint are true and to demonstrate that continued emergency custody is necessary. The principle of a prompt hearing to review decisions to place a juvenile in emergency custody has been endorsed by all of the recent national standards-setting and model legislative groups that have addressed the issue. U.S. Department of Health, Education and Welfare, the *Model Act for Family Courts,* Section 23 (1975); and the *Report of the Task Force, supra* at Standards 12.9 and 12.10 recommend that a hearing to review the initial emergency custody decision be held within twenty-four hours of the filing of the petition—i.e., within forty-eight hours of being taken into custody. Both the *Model Act for Family Courts, supra,* and the *Report of the Task Force, supra* do not exclude weekends and holidays from the prescribed time periods. National Conference of Commissioners on Uniform State Laws, the *Uniform Juvenile Court Act,* Section 17(b) (1968) requires a hearing within seventy-two hours. The provision adopted by the IJA/ABA Joint Commission recommends that a hearing be held no later than the next business day. IJA/ABA, *Neglect, supra.*

The National Advisory Committee concluded that the time period for the initial judicial review of detention decisions in delinquency and noncriminal misbehavior and the time period for initial judicial review of decisions to place a child in emergency custody should be the same. Although the recommended 24-hour limit may cause some difficulties, especially in rural areas, the emotional impact on a juvenile of removal from even a bad home requires that the mechanism for correcting improper emergency custody decisions be available as quickly as possible. *See* J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* (1973); *see also* Standard 3.155.

The notice and hearing procedures recommended in the standard are parallel to those recommended for review of detention decisions in delinquency and noncriminal misbehavior cases. *See* Standard 3.155. At the hearing, the family court judge should first determine whether there is probable cause to believe that a juvenile has been neglected or abused. Accord, IJA/ABA, *Neglect, supra;* American Indian Law Center, *Model Children's Code,* Section 6.7(A) (1976); *cf. Gerstein v. Pugh,* 420 U.S. 103 (1975). As in the other standards dealing with determinations of probable cause, Standard 3.157 does not preclude such determinations from being based in part on hearsay. *See, e.g.,* Standards 3.155 and 3.165.

If probable cause is found, the court should review the decision to retain a juvenile in emergency custody. The state should bear the burden of showing that the intake officer's decision complies with the criteria set forth in Standard 3.154 and that continued emergency custody is necessary.

If emergency custody is continued, Standard 3.158 recommends that there should be weekly hearings to determine whether out-of-home custody remains necessary.

Related Standards

3.113	Jurisdiction Over Neglect and Abuse
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.155	Initial Review of Detention Decisions
3.156	Review of the Conditions of Release
3.158	Review, Modification, and Appeal of Detention Decisions
3.161	Case Processing of Time Limits
3.171	Rights of the Parties

3.158 Review, Modification, and Appeal of Detention and Emergency Custody Decisions

A review hearing should be held at or before the end of each seven-day period in which a person subject to the jurisdiction of the family court over delinquency or noncriminal misbehavior remains in secure or nonsecure detention, or whenever new circumstances warrant an earlier review.

In accordance with a specific order of the family court, an intake officer may at any time relax conditions of release, which the court has approved or imposed, if the restrictions are no longer necessary. A notice stating the changed circumstances and the new conditions should be filed with the court and a copy sent to the juvenile, the juvenile's attorney, and parents, guardian, or primary caretaker, and to the family court section of the prosecutor's office.

Secure or nonsecure detention or more stringent conditions should be imposed only by the family court following a hearing at which the circumstances justifying the additional restrictions, including a willful violation of the conditions of release or a willful failure to appear, are demonstrated by clear and convincing evidence. The decision to impose additional restrictions should be made in accordance with the criteria set forth in Standards 3.151 and 3.152 for delinquency cases and Standard 3.153 for noncriminal misbehavior cases, and in the same manner as in Standard 3.155.

The subject of a complaint or petition should be entitled to appeal an order of the family court imposing or denying release from detention, or other significant restraint on liberty. The notice of appeal should include a copy of the order and of the reasons for that order given by the family court. Appeals from detention orders should be heard and decided as expeditiously as possible.

The same review, modification, and appellate procedures should apply to neglect and abuse proceedings in which the juvenile has been placed in emergency custody, and the same modification and appellate procedures should be applicable to neglect and abuse proceedings in which conditions designed to protect the juvenile have been imposed on the juvenile's parents, guardian, or primary caretaker.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standards 4.5, 7.10, 7.12, and 7.13 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Interim Status*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.11 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

In keeping with the concern over the impact of long-term detention or emergency custody of juveniles, this standard provides for recurring review of such detention or custody. The review is intended to assure that detention or emergency custody is still warranted and to encourage prompt adjudication.

The standard requires a judicial review hearing every seven days or whenever new circumstances arise. This combines the short time period recommended by the IJA/ABA Joint Commission with the more flexible criterion proposed by the *Report of the Task Force, supra;* IJA/ABA, *Interim Status, supra;* Standard 7.10; *Report of the Task Force, supra.* The Wisconsin Council on Criminal Justice, Special Study Committee on Criminal Justice Standards and Goals, *Juvenile Justice Standards and Goals,* Section 7.3 *et. seq.* (1975) urges that detention in delinquency cases be reviewed every five days.

The second paragraph of the standard is to encourage family court judges to identify the circumstances in which the intake officer may terminate the detention or emergency custody or may ease or void the conditions. Intake officers are not provided the power to relax the conditions of detention or release without judicial approval. However, intake officers should be authorized to seek such approval when the situation warrants.

Imposition of more stringent conditions on release or, in neglect and abuse matters, on continued parental custody of the child require a court order so as to assure that the added restraints are warranted. One of the cricumstances justifying a tightening of the conditions of release or placing the juvenile in more restrictive detention is a willful violation of the conditions of release.

Finally, the standard provides for interlocutory appeal of decisions approving or imposing detention, emergency custody, or other significant restraints on liberty. Such appeals should be processed and decided as expeditiously as possible. It is anticipated that many appeals of detention decisions will be heard by a single appellate court judge. The provisions approved by the IJA/ABA, *Interim Status, supra* recommend that appeals of detention decisions be heard within twenty-four hours of the filing of the notice of appeal and decided at the conclusion of appellate argument. IJA/ABA, *Interim Status, supra* at Standard 7.12.

Related Standards

3.121 Relationship to Other Courts
3.151 Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152 Criteria for Detention in Secure Facilities—Delinquency
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.155 Initial Review of Detention Decisions
3.156 Review of the Conditions of Release
3.157 Initial Review of Emergency Custody Decisions
3.161 Case Processing—Time Limits
3.171 Rights of the Parties
3.191 Right to Appeal
3.192 Right to Counsel and a Record of the Proceedings

3.16 Pre-Adjudication Procedures
3.161 Case Processing Time Limits

In matters subject to the jurisdiction of the family court over delinquency, the following time limits should apply:

a. Intake decisions, as defined in Standard 3.142, should be made within twenty-four hours after the juvenile has been taken into custody, excluding nonjudicial days, if the juvenile is detained, and within thirty calendar days of the filing of the complaint if the juvenile is not detained;

b. If a juvenile is detained, the hearing to review the detention decision, as defined in Standard 3.155, should be held within twenty-four hours after a juvenile has been taken into custody;

c. The decision by the family court section of the prosecutor's office to file a petition, as defined in Standard 3.163, should be made within two judicial days after receipt of the intake officer's report if the juvenile is detained, and within five judicial days after receipt of that report if the juvenile is not detained;

d. When a complainant resubmits a complaint dismissed by the intake officer, the decision by the family court section of the prosecutor's office whether or not to file a petition, as defined in Standard 3.163, should be made within thirty calendar days after resubmission of the complaint;

e. The arraignment hearing, as defined in Standard 3.166, should be held within five calendar days after the filing of the petition;

f. The adjudication hearing should be held within fifteen calendar days after the filing of the petition for juveniles who are detained, and within thirty calendar days after the filing of the petition for nondetained juveniles;

g. The disposition hearing for juveniles adjudicated delinquent should be held within fifteen calendar days after adjudication;

h. Any issue taken under advisement by the family court judge should be decided within thirty calendar days of submission;

i. Appellate courts should decide interlocutory appeals from family court decisions within thirty calendar days after the interlocutory appeal is filed; and

j Appeals from final orders of the family court should be decided within ninety calendar days of filing.

When these time limits are not met, there should be authority to release a detained juvenile, to impose sanctions against the persons within the juvenile justice system responsible for the delay, and to dismiss the case with or without prejudice.

Time limits equivalent to those recommended for delinquency cases should apply to matters subject to the jurisdiction of the family court over noncriminal misbehavior and neglect and abuse.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standard 7.10 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Interim Status*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.1 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard sets forth the maximum time limits that should apply to the processing of delinquency, noncriminal misbehavior and neglect and abuse cases. In accord with the recommendations of the IJA/ABA, *Interim Status, supra,* the *Report of the Task Force, supra,* and *Department of Health, Education and Welfare,* the *Model Act for Family Courts,* Section 17 (1975), the standard recommends swifter processing of cases in which a juvenile accused of committing a delinquency act or engaging in noncriminal misbehavior is detained, or a juvenile alleged to be neglected or abused is in emergency custody. *See also* Wisconsin Council on Criminal Justice Special Study Commission on Criminal Justice Standards and Goals, *Juvenile Justice Standards and Goals* (1975); ABA, *Standards Relating to Speedy Trial,* Section 1.1 (approved draft, 1968). The maximum times set by the standard are intended to provide a sufficient opportunity for all parties to prepare, although assuring that cases are heard while the events are still fresh in the juvenile's mind. In cases in which a youth is detained or in emergency custody, the total time period between the date on which the child is taken into custody and the adjudication hearing is set at a maximum of eighteen calendar days. In noncustody cases, the total time from filing the complaint to adjudication is set at a maximum of sixty-five days. It is anticipated that efficient management of the family court and other juvenile justice agencies will make complaince with the standard possible. *See, e.g.*, Standard 3.125. However, Standard 3.162 does recommend limited grounds for extensions as well as the periods that should be excluded from the computation of the time limits.

The reasons underlying the time limits for intake decisions—paragraph (a)—are discussed in the Commentary to Standard 3.142. The time limits for hearings to review detention decisions or decisions to place a juvenile alleged to be neglected or abused in emergency custody—paragraph (b)—are discussed in Standards 3.155 and 3.157, respectively. Standard 3.158 sets a seven-day limit on subsequent review hearings if detention or emergency custody is continued.

Paragraphs (c) and (d) prescribe the time within which the petition must be filed following submission of the report containing the intake officer's recommendation, *see* Standard 3.147, or resubmission of a dismissed complaint by the complainant. *See* Standards 3.147 and 3.163.

Under paragraph (e), the arraignment proceeding should be held within five days of the filing of the petition. In cases in which the juvenile is detained or in emergency custody, it is anticipated that the arraignment will be combined with the weekly custody review hearing. *See* Standards 3.158 and 3.166. In noncustody cases, the arraignment can be combined with the hearing to determine probable cause if such a hearing has been requested and there is sufficient time for the parties to prepare. *See* Standard 3.165.

The 15/30-day limit on the period between the filing of the petition and the adjudication hearing—paragraph (f)—adopts the position approved by the IJA/ABA, *Interim Status, supra*. The *Report of the Task Force, supra* contains a 20/60-day limit. However, paragraph (g), like the Task Force provision, recommends that disposition hearings be held within fifteen days after adjudication, whether or not the juvenile is in custody. *See* Standard 3.188; *cf.* IJA/ABA, *Interim Status, supra*—fifteen days custody/thirty days noncustody. Paragraphs (h)-(j) endorse the time limits proposed by the *Report of the Task Force, supra* for matters taken under advisement by the family court, *see* Standard 3.168, and on appellate court decisions during the course of and following the adjudicatory hearing. *See* Standards 3.191 and 3.192.

If the time limits are exceeded and no extension has been granted and none of the exclusions are applicable, the standard recommends that one or more of four types of sanctions be applied. If a juvenile subject to the jurisdiction of the family court over delinquency or noncriminal misbehavor is detained and the time limit provisions are violated, he/she should be released, thereby making applicable the somewhat longer time periods for noncustody cases. If those time limits are then violated, the case should be dismissed. In determining whether the dismissal should be with or without prejudice—i.e., whether or not the case may be refiled—the judge should consider such factors as the seriousness of the offense, the facts and circumstances leading to the dismissal, the impact of reprosecution on the administration of justice, the length of the delay, and the prejudice, if any, to the respondent. *See Speedy Trial Act*, 18 U.S.C. 3162 (Supp. 1979). Because all participants in the juvenile justice process should share the burden and responsibility of assuring that a case is handled as speedily and fairly as possible, the standard provides further that juvenile justice personnel, including attorneys, who cause unnecessary delay should be subject to sanctions. However, when the reason for delay is lack of sufficient resources rather than individual failures, the family court should make this fact known.

Related Standards

3.142	Review of Complaints
3.147	Notice of (Intake) Decisions
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152	Criteria for Detention in Secure Facilities—Delinquency
3.153	Criteria for Detention and Release—Noncriminal Misbehavior
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.155	Initial Review of Detention Decisions
3.157	Initial Review of Emergency Custody Decisions
3.158	Review, Modification, and Appeal of Detention Decisions
3.162	Extension and Computation of Case Processing Time Limits
3.166	Arraignment Procedures
3.188	Dispositional Hearings

3.162 Extension and Computation of Case Processing Time Limits

Extensions of the time limits set forth in these standards should be authorized when:

a. The attorney for the state certifies that a witness essential to the state's case or other essential evidence will be unavailable during the prescribed period; or

b. A continuance is requested by any party and the judge finds that the ends of justice served by granting the continuance outweigh the interests of the public and the other parties in a speedy resolution of the case.

Such extensions should not exceed thirty calendar days when the subject of the complaint, the respondent to a petition, or a juvenile alleged to have been neglected or abused is in custody and should not exceed sixty calendar days in noncustody cases.

Any period of delay caused by the absence, incompetency, or physical incapacity of the respondent; consideration of a motion for change of venue, a motion for transfer to a court of general jurisdiction pursuant to Standard 3.116, or an extradiction request; a diagnostic examination ordered by the family court and completed within the time specified in the order; or an interlocutory appeal; and a reasonable period of delay caused by joinder of the case with that of another person for whom the time limits have not expired, should not be included in the computation of the prescribed time periods.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standard 7.10 (tentative draft, 1977); *see also Speedy Trial Act,* 18 U.S.C. 3161(h) (Supp. 1979).

Commentary

In seeking to limit the possibilities for delay while providing sufficient leeway for special problems that may arise in individual cases, the standard provides two sets of exceptions to the time limits proposed in these standards. The first exception is for continuances sought by the state because of the unavailability of a key witness or evidence as sought by any party in the interests of justice. The length of such continuances are limited to no more than thirty days when the subject of a delinquency or noncriminal misbehavior complaint, or the respondent to a delinquency or noncriminal misbehavior petition is detained, or when a juvenile alleged to have been neglected or abused is held in emergency custody, and no more than sixty days in nondetention and nonemergency custody cases. Similar limits should be imposed on extensions of the time for processing and deciding an appeal. The term "unavailable" in intended to denote situations in which the presence of a witness cannot be secured "by due diligence" or a witness resists "appearing or being returned" for a hearing. *See* 18 U.S.C. Section 3161(h) (3) (B) (Supp. 1976). Under the standard, general court congestion, lack of diligent preparation by counsel, or failure to obtain an available witness are not grounds for granting a continuance. *Id.,* at Section 3161(h) (8) (c). Similarly, because of the potential for abuse and for circumvention of the policy favoring adjudication of delinquency, noncriminal misbehavior, and neglect and abuse matters as expeditiously as possible, the standard is intended to discourage stipulated continuances.

The second exception excludes from the case processing time periods set forth in Standard 3.161, delays caused by the absence, incompetency or physical incapacity of the subject of the proceedings, diagnostic examinations, joinder with a related case, and certain procedural matters that may obviate the need for further proceedings.

Related Standards

3.161	Case Processing Time Limits
3.1810	Enforcement of Dispositional Orders—Delinquency
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse

3.163 Decision to File a Petition

All petitions should be prepared and filed by the family court section of the prosecutor's office and signed by the attorney in charge of that section.

A petition should not be filed unless it is determined that the allegations contained in the complaint are legally sufficient. If the allegations are not legally sufficient, the complaint should be dismissed.

When a complainant resubmits a complaint dismissed by the intake officer, an attorney from the family court section of the prosecutor's office should consider the facts presented by the complainant, consult with the intake officer who made the initial decision, and then make the final determination as to whether a petition should be filed. This determination should be made as expeditiously as possible and in no event more than thirty calendar days after the complaint has been resubmitted.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 15.13 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard recommends that the responsibility for submitting a delinquency, noncriminal misbehavior, or neglect and abuse case to the family court for adjudication be vested in the attorney in charge of the family court section of the prosecutor's office. However, unlike the provisions proposed by the *Report of the Task Force, supra,* and the *Model Act for Family Courts,* the standard limits review of the intake officer's recommendation to file a petition to a determination of legal sufficiency. *See Report of the Task Force, supra;* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 13 (1975). This practice assigns to the intake officer and to the prosecutor, respectively, the decision most appropriate to their training and experience. Under Standards 3.141-3.147, the intake officer determines whether, on the basis of the nature of the allegations and the juvenile's age and maturity, the prior contacts with the intake unit and family court that the juvenile—and in noncriminal misbehavior and neglect and abuse cases, the juvenile's family—has had, the results of those contacts, and the availability of appropriate services outside the juvenile justice system, it is in the interest of the juvenile, the family, and the community to dismiss the complaint; refer the juvenile and/or his/her parents, guardian, or primary caretaker for services; or recommend that a petition be filed. The prosecutor must then determine whether the facts alleged are sufficient to establish jurisdiction and whether there is a competent and credible evidence available to support the allegations. *See Report of the Task Force, supra* at Commentary to Standard 15.13. The standards approved by the IJA/ABA Joint Commission recommend that in delinquency proceedings, the prosecutor should decide whether it is appropriate to file a petition, but in other types of proceedings, the intake officer should make this decision. *See* Institute of Judicial Administration/American Bar Association Joint Commisson on Juvenile Justice Standards, *Standards Relating to the Prosecution Function,* Standards 4.1-4.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Prosecution Function*].

Implementation of the recommendations in the standard will expand the role and responsibility of the prosecutor in many jurisdictions. A 1972 survey of sixty-eight American cities found that in only 11.8 percent of the cities surveyed did the prosecutor have authority to file a petition; in only 36.8 percent was the petition reviewed by the prosecutor for legal sufficiency; and in only 8.8 percent was the prosecutor required to sign the petition. Boston University Center for Criminal Justice, *Prosecution in the Juvenile Courts: Guidance for the Future,* Appendix B (1973).

The standard does recommend a broader prosecutorial review when a complainant resubmits a complaint dismissed by the intake officer. *See* Standard 3.147. In such cases, an attorney from the family court section of the prosecutor's office should discuss the matter with both the complainant and the intake officer, undertake whatever additional investigation may be necessary, and make the final decision. No provision is made for the complainant to appeal this decision to the family court or to file a petition without the signature of the chief attorney for the family court section of the prosecutor's office. *See* IJA/ABA, *Prosecution Function, supra; but see Report of the Task Force, supra.*

Standard 3.161 recommends that the review of the legal sufficiency of complaints and the preparation and filing of the petition be completed within two days (excluding weekends and holidays) when the subject of the complaint is detained or when a juvenile alleged to have been neglected or abused is in emergency custody, and within five days (excluding weekends and holidays) in nondetention or noncustody cases. This allows some time to carry out any investigation that may be deemed necessary and draft the pleadings, without unduly delaying the case. A thirty day limit is placed on the time that may be taken to consider the resubmission of a dismissed complaint. This is comparable to the time given to the intake officer to make the initial decision regarding the complaint when the juvenile is not detained or placed in emergency custody. No specific time constraints are imposed on the complainant's decision to resubmit the complaint. However, the relevant statute of limitations, the maximum jurisdictional ages recommended in Standard 3.115, and, when applicable, the right of the subject of the complaint to a speedy trial, provide some protection against unreasonable delay.

Related Standards

3.111 Jurisdiction Over Delinquency
3.112 Jurisdiction Over Noncriminal Misbehavior
3.113 Jurisdiction Over Neglect and Abuse
3.131 Representation By Counsel—For the State
3.134 Role of Counsel
3.142 Review of Complaints
3.147 Notice of Decision
3.161 Case Processing Time Limits
3.164 Petition and Summons
3.165 Determination of Probable Cause

3.164 Petition and Summons

The petition should set forth with particularity all factual and other allegations relied upon in asserting that a person is subject to the jurisdiction of the family court over delinquency, noncriminal misbehavior, or neglect and abuse. Specifically, the petition should include:

a. The name and address of the respondent;
b. The date, time, manner, and place of the conduct alleged as the basis of the court's jurisdiction;
c. Any other factual allegations necessary to establish jurisdiction;
d. A citation to the legal provisions relied upon for jurisdiction and alleged to have been violated by the conduct described in (b); and
e. The types of dispositions to which the respondent could be subjected.

In addition, if the respondent is a juvenile, the petition should include the name and address of the juvenile's parents, guardian, or primary caretaker.

If the respondent is not detained, a summons should be issued directing the respondent to appear before the family court at a specified time and place for arraignment; describing the nature and function of the arraignment proceeding; and advising the respondent of his/her legal rights.

If the respondent is detained, a notice containing the information included in a summons should be attached to the petition, and an order should be issued directing that the respondent be brought before the court at the specified time and place.

A copy of the petition together with the summons or notice should be served on the respondent and any other persons who are necessary or proper parties to the proceedings. In addition, a copy of the petition and summons or notice should be sent to the attorney for each of the parties, and if the respondent is a juvenile, the respondent's parents, guardian, or primary caretaker.

Source:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pretrial Court Proceedings,* Standards 1.2 and 1.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Pretrial Court Proceedings*].

Commentary

The standard sets forth the information to be included in the petition and summons.

The purpose of the petition is to provide respondents—i.e., juveniles accused in the petition of committing a delinquent offense or engaging in noncriminal misbehavior, or adults accused in the petition of neglecting or abusing a child or misusing their parental authority—with sufficient notice of the charges to be able to prepare for trial. Such notice is mandated in delinquency proceedings by *In re Gault,* 387 U.S. 1 (1967). The petition also provides a record of the allegations to protect against double jeopardy. The standard recommends that the petition should clearly describe the nature of the conduct that triggered the proceedings and the date, time, and place at which it occurred. It recommends further that the petition should also include other factual allegations necessary to establish jurisdiction—e.g., the juvenile's age at the time of the offense, and in noncriminal misbehavior cases, that all noncoercive alternatives have been exhausted. The citations to the statutory provisions on which the proceeding is based are intended to clarify the type of jurisdiction sought and to enable the respondent to identify the points that must be proven at the adjudication hearing. Information regarding the types of dispositions available is included to make clear to the respondent the seriousness of the proceedings. The name and address of the parents, guardian, or primary caretaker of a juvenile subject to the jurisdiction of the family court are included in the petition because the family, even in delinquency proceedings, may be called upon to play a major role in the disposition should the allegations be proven. *See* Standards 3.133, 3.183, 3.184, and 3.188.

The summons should specify the time and address at which the person named in the petition should appear before the family court for arraignment, what will take place at the arraignment proceeding, *see* Standard 3.166, and the legal rights to which the respondent is entitled, *See* Standard 3.171; *cf.* Standard 2.234. In order to assure that juveniles who are detained have the same information as those who are not detained, the standard provides that they should receive a notice in lieu of the summons which contains information identical to that included in the summons.

The standard provides that the petition and summons or notice should be served on the respondent, the respondent's attorney, and if the respondent is a juvenile, his/her parents. It recommends further that a copy of these items should be provided to "other persons who are necessary or proper parties." This term is taken from the IJA/ABA, *Pretrial Court Proceedings, supra,* and is intended to refer to individuals, agencies, or institutions having a substantial interest in the outcome of the proceedings—e.g., agencies providing services to a child or family, schools in noncriminal misbehavior cases based on truancy, or a correctional agency already supervising a juvenile.

The manner and timing of service is not specified. It should be designed to achieve the purposes of the petition and summons listed above and to meet the time limits recommended in Standard 3.161. Communities with significant non-English speaking populations should make provision for translating the petition and summons or notice into the languages most commonly used by those populations.

Related Standards

2.234 Form of Citation, Summons, and Order to Take Into Custody
3.131 Representation by Counsel—For the State
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parents
3.161 Case Processing Time Limits
3.163 Decision to File a Petition
3.166 Arraignment Procedures
3.171 Rights of the Parties

3.165 Determination of Probable Cause

In cases in which there has not been a judicial determination of probable cause pursuant to Standard 3.116, 3.155, or 3.157, a respondent should be entitled, on request, to a hearing following the filing of the petition at which the state is required to establish that there is probable cause to believe that the allegations in the petition are true. If probable cause is not established, the petition should be dismissed. The hearing should be held as promptly as possible after the filing of the respondent's request.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pretrial Court Proceedings,* Standard 4.1 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Pretrial Court Proceedings*].

Commentary

Standards 3.116, 3.155, and 3.157 provide for a determination that there is probable cause to believe that the allegations in the complaint or petition are true, in all cases in which there has been a motion to transfer the matter to another division of the highest court of general jurisdiction, in which the respondent is being detained, or in which a juvenile is being held in emergency custody. This standard recommends that respondents in other delinquency, noncriminal misbehavior, or neglect and abuse cases should be entitled to request a determination of probable cause following the filing of a delinquency petition. Although not constitutionally required when the respondent's liberty is not significantly restrained, *see Gerstein v. Pugh,* 420 U.S. 103 (1975), hearings to determine probable cause can serve to protect the person charged against unwarranted prosecution and save both respondents and the public the expense of unnecessary trials. However, because Standard 3.163 recommends that the prosecutor determine that the allegations are legally sufficient before filing a petition and in light of the broad discovery procedures recommended in Standard 3.167 and the need to hold the time between the filing of the petition and the adjudication hearing to a minimum, *see* Standard 3.161, the standard proposes that other than in the three situations specified above, probable cause hearings should be held only if requested by the respondent. Requests are limited to after the filing of the petition to avoid holding hearings in cases in which the intake officer or family court section of the prosecutor's office conclude that the matter should not be submitted to the family court. It is anticipated that probable cause hearings will be requested only when the respondent believes that the allegations or the evidence to support them are so inadequate that the state will be unable to sustain the relatively low level of proof required. Hence, such determinations should not impose a significant new burden on the family court.

It is anticipated that probable cause hearings requested under this standard may often be held in conjunction with hearings requested under Standard 3.156 to review the terms of release or in conjunction with the arraignment proceeding if there is sufficient time for the parties to prepare. *See* Standard 3.166. As with the probable cause determinations recommended in other sections of these standards, the use of hearsay should not be totally precluded. *See* Standard 3.155.

The provisions adopted by the IJA/ABA Joint Commission recommend that there be a judicial finding of probable cause in all delinquency and neglect and abuse cases. IJA/ABA, *Pretrial Court Proceedings, supra;* and the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standard 5.2(b) (draft, 1977). *See also* Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, *Juvenile Justice Standards and Goals,* Section 12.5(d) (2d draft, 1975). None of the other sets of standards or model legislative provisions reviewed and no state juvenile code provide for probable cause determinations in nondetention or nontransfer cases.

Related Standards

3.116	Transfer to Another Court—Delinquency
3.142	Review of Complaints
3.155	Initial Review of Detention Decisions
3.157	Initial Review of Emergency Custody Decisions
3.161	Case Processing Time Limits
3.163	Decision to File a Petition
3.166	Arraignment Procedures
3.171	Rights of the Parties

3.166 Arraignment Procedures

At the inception of the arraignment proceeding, the judge should explain the allegations and possible consequences of the petition, as well as the rights to which the respondent is entitled, and should appoint an attorney to represent the respondent, if the respondent is not already represented by counsel and meets the eligibility requirements set forth in Standard 3.132 or Standard 3.133.

The respondent should then be asked to admit or deny the allegations in the petition. If the allegations are admitted and the admission accepted pursuant to Standard 3.176, the case should be set for disposition. If the allegations are denied, the state should be required to prove the allegations in accordance with Standard 3.174. A denial of the allegations should not result in a more restrictive disposition if the allegations are subsequently proven to be true.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 12.4 and 13.2 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

For purposes of these standards, the term "arraignment" denotes a hearing held five days after the filing of the petition, the purpose of which is to advise the respondent of the formal charges and of the rights to which he/she is entitled; to determine whether the respondent is represented by counsel and to appoint counsel when appropriate under Standards 3.132 and 3.133; and to obtain the respondent's admission to or denial of the allegations. It should not be confused with the hearings recommended in Standards 3.155 and 3.157 to review detention or placement in emergency custody within twenty-four hours after a juvenile has been taken into custody. *But see Report of the Task Force, supra.*

For respondents who are not in custody, the arraignment is likely to be the first appearance before the family court. *See* Standard 3.157. It can be combined with the hearing to determine probable cause if such a hearing has been requested and if there is sufficient time for the parties to prepare. *See* Standard 3.165. For respondents who are in custody, the arraignment can be held in conjunction with the weekly review hearing called for by Standard 3.158.

Although some groups, notably the National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* 4.8 (1973), have suggested that arraignment is unnecessary and confusing, that many of its notice functions can be handled administratively, and that the admission or denial can be entered at the beginning of the adjudication proceeding, it was the conclusion of the National Advisory Committee that the explanations provided by the intake officer and in the petition and summons, *see* Standards 3.146, 3.147, and 3.164, are not sufficient to assure that juveniles and their families fully understand the nature and consequences of the proceedings or the rights to which they are entitled. *Report of the Task Force, supra.*

The second paragraph of the standard reflects the policy that denial of the allegations should be regarded as an assertion of the right to have the state prove the allegations contained in the petition. Accordingly, exercise of this right should not be punished by the imposition of a harsher disposition in the event the allegations are proven. Not only is this necessary to avoid chilling the exercise of a respondent's constitutional rights, *see In re Winship,* 397 U.S. 358 (1970), but it is an essential support to the prohibitions against plea-bargaining recommended in Standard 3.175. *See Report of the Task Force, supra.*

Related Standards

3.131	Representation by Counsel—For the State
3.132	Representation by Counsel—For the Juvenile
3.133	Representation by Counsel—For the Parents
3.134	Role of Counsel
3.161	Case Processing Time Limits
3.163	Decision to File a Petition
3.164	Petition and Summons
3.171	Rights of the Parties
3.175	Plea Negotiations
3.176	Uncontested Adjudications
3.177	Withdrawals of Admissions

3.167 Discovery

Each state should develop rules and guidelines permitting as full discovery as possible prior to adjudication and other judicial hearings. Discovery should be conducted informally between counsel. However, the family court should supervise the exercise of discovery to the extent necessary to ensure that it proceeds properly, expeditiously, and with a minimum of imposition on the persons involved.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pretrial Court Proceedings,* Standards 3.1 and 3.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Pretrial Court Proceedings*]; American Bar Association, *Standards Relating to Discovery and Procedures Before Trial,* Sections 1.2 and 1.4 (approved draft, 1970) [hereinafter cited as ABA, *Discovery*].

Commentary

This standard endorses the principle of broad disclosure by all parties to delinquency, noncriminal misbehavior, and neglect and abuse proceedings prior to adjudication or other judicial hearings—e.g., transfer hearings pursuant to Standard 3.116. In order to reduce delay and unnecessary paperwork, it provides that disclosures should be informal and automatic, rather than requiring a specific request. *Accord,* IJA/ABA, *Pretrial Court Proceedings, supra;* ABA, *Discovery, supra; but see* Fed. R. Crim. P. 16. The standards on intake detention, and disposition decisions specifically provide for disclosure of the information on which those decisions are based. *See* Standards 3.147, 3.155-3.157, and 3.187-3.188.

The standard does not specify the exact scope of disclosure. The extent of discovery, if any, is a subject of much debate. Opponents suggest that in criminal cases, disclosure of information by the state can only assist the respondent in contriving a defense, that it may lead to initimidation of witnesses and nitpicking cross-examinations of witnesses on minor discrepancies between testimony and prior written statements, that it will delay and complicate the proceedings, and that because of the proscriptions of the Fifth Amendment to the Constitution, discovery can never be a "two-way street." Proponents of discovery contend that many of these arguments were made prior to the introduction of discovery into civil proceedings but have not proven to be true, and that discovery helps to reduce gamesmanship in criminal proceedings and the importance of surprise as a trial tactic. Moreover, they argue that rather than lengthening the proceedings, discovery focuses proceedings on the issues and encourages guilty parties to admit to their guilt after seeing the evidence stacked against them, and suggest that the defense can be asked to disclose everything except statements of the respondent or defendant and whether or not the respondent or defendant will testify. The Supreme Court has approved mutual disclosures by the defense and prosecution in criminal cases in *William v. Florida,* 309 U.S. 78 (1970) and *Wardius v. Oregon,* 412 U.S. 470 (1973). The Court also called for the disclosure of social reports to the attorneys of juveniles facing transfer to criminal court. *Kent v. United States,* 383 U.S. 541 (1966). Discovery has long been part of civil procedure.

The ABA, *Standards on Discovery, supra* at Sections 2.1-2.6, and 3.1-3.2 provide for broad discovery by both the prosecution and the defense. Under the ABA provision, prosecutors are required to disclose, *inter alia,* the names, addresses, prior recorded statements, and criminal records of persons they intend to call as witnesses, statements of the defendant and any codefendant, expert and medical reports, tangible evidence obtained from or belonging to the defendant that the prosecutor intends to introduce at trial, whether there has been electronic surveillance, and whether any relevant information has been provided by an informant. The ABA standards would require defendants to disclose, subject to constitutional limitations, the names and addresses of intended witnesses, the nature of the defense to be used at trial, experts' statements and the results of scientific medical and mental health examinations; and to appear in a line-up, speak for identification, be fingerprinted, be photographed, try on clothing, provide blood, hair, and other samples, provide hand writing samples, and submit to a reasonable physical or medical inspection. Additional sections address the criteria, scope, and procedures for excision and the issuing of protective orders.

The IJA/ABA, *Pretrial Court Proceedings, supra* endorsed broad discovery in delinquency cases. However, disclosures by the respondent are limited to the nature of the defense, the names of prospective witnesses, and medical or scientific reports. Both the ABA and the IJA/ABA Joint Commission recommendations provide for additional discovery in the discretion of the court. The IJA/ABA standard would also allow both the state and the respondent to take depositions. None of the other sets of national standards or model legislation addresses the issue of discovery. Several states and the Federal Rules of Criminal Procedures provide for discovery of varying scope by both the prosecution and the defense.

Related Standards

3.147 Notice of Decision

3.155 Initial Review of Conditions of Release
3.156 Review of Conditions of Release
3.157 Initial Review of Emergency Custody Decisions
3.187 Predisposition Reports
3.188 Dispositional Hearings
3.1810 Enforcement of Dispositional Orders—Delinquency
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1813 Enforcement of Dispositional Orders—Neglect and Abuse

3.168 Motion Practice

Each jurisdiction should develop rules for the regulation of motion practice in family court, requiring motions normally to be made in writing and when appropriate to be supported by affidavit. The rules should specify time limits for the filing of motions and for service on opposing parties and should prescribe procedures for securing motion hearings.

The rules governing motions should provide for extra-judicial conferences between the parties before motions are argued, whenever discovery motions are filed, and in other appropriate circumstances.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.2 (1976).

Commentary

One consequence of the formalization of delinquency proceedings following *In re Gault,* 387 U.S. 1 (1967), is that motion practice has become an established part of family court proceedings. *See, e.g.,* D. Besharov, *Juvenile Justice Advocacy,* 265 *et. seq.* (1974). Pretrial motions often help to clarify the issues for adjudication as well as protect the rights of the parties. In order to facilitate the smooth operation of the court and to avoid unnecessary delay, each jurisdiction should establish rules governing the time for filing, the form of and the procedures for hearing motions in delinquency, noncriminal misbehavior, and neglect and abuse cases. Whenever possible, such rules should be promulgated on a statewide basis. To further assure the efficient use of court time, informal conferences between the parties and their counsel should be encouraged to resolve questions regarding discovery and other routine issues.

Related Standards

3.134	Role of Counsel
3.161	Case Processing Time Limits
3.162	Extension and Computation of Case Processing Time Limits
3.165	Determination of Probable Cause
3.167	Discovery
3.171	Rights of the Parties

3.169 Appointment and Role of Guardian *Ad Litem*

The family court should appoint a guardian *ad litem* to protect the rights and interests of a juvenile subject to its jurisdiction:

- **a. Who is incapable of adequately comprehending the nature and consequences of and participating in the proceeding because of immaturity or a mental disability;**
- **b. Whose parent, guardian, or primary caretaker does not appear or has an adverse interest in the proceeding; or**
- **c. Whose interests otherwise require it.**

The guardian *ad litem* should inquire thoroughly into all the circumstances that a careful and competent individual in the juvenile's position would in determining his/her interests in the proceedings.

The appointment should be made at the earliest feasible time after the need therefor has been shown. The court should inform guardians *ad litem*, upon appointment, of their responsibilities and powers.

Persons with interests adverse to those of the juvenile, or a public or private institution or agency having custody of the juvenile should not be appointed guardian *ad litem*.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Pretrial Court Proceedings*, Standard 6.7 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Pretrial Court Proceedings*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 16.4 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard describes the circumstances in which a guardian *ad litem* should be appointed by the family court for a juvenile involved in delinquency, noncriminal misbehavior, or neglect and abuse proceedings, the duties of a guardian *ad litem* and the persons eligible for such an appointment. It endorses the general principle that a juvenile should have a parent or guardian *ad litem* present throughout the proceedings to provide friendly advice and support. *See* IJA/ABA, *Pretrial Court Proceedings, supra.*

Specifically, the standard recommends appointment of a guardian *ad litem* in three instances. The first is when a juvenile is unable to understand the nature and possible consequences of the proceedings and to determine, rationally, his/her interests in that proceeding. Unlike the IJA/ABA, *Pretrial Court Proceedings, supra,* it includes children who are unable to appreciate the nature and consequences of the proceeding because of mental illness or mental retardation, as well as those unable to do so because of immaturity. *See Report of the Task Force, supra* at Standard 16.3. Thus, in neglect and abuse cases involving young children or in delinquency and noncriminal misbehavior cases in which the juvenile is determined to be seriously mentally ill or mentally retarded, an adult should be appointed to assist in identifying the child's interests and protecting the child's rights.

The second instance is when the child's parents are not present to provide advice during the proceeding or when their interests in the proceeding conflict with those of the child. Similar provisions are commonly found in statutes authorizing appointment of a guardian *ad litem*. *See., e.g.,* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 41 (1975). National Council of Juvenile Court Judges, *Uniform Juvenile Court Act,* Section 51 (1968); *see also* IJA/ABA, *Pretrial Court Proceedings, supra; Report of the Task Force, supra.* A discussion of what constitutes adverse interest is contained in the Commentary to Standard 3.132.

The third instance is when, for some other reason, the juvenile needs an independent adult to provide guidance, for example, when "the parent seems incompetent, disinterested, or otherwise incapable of being a source of positive guidance and support of the child." IJA/ABA, *Pretrial Court Proceedings, supra.*

The standard suggests that the guardian *ad litem* take on the duties that the juvenile or the juvenile's parent acting on the juvenile's behalf would normally perform. Ordinarily, when the juvenile is the respondent, the guardian *ad litem* should insist that the state prove the allegations in the petition. *See Report of the Task Force, supra* at Standard 16.4; IJA/ABA, *Pretrial Court Proceedings, supra;* and Standard 3.174. Unlike the provision adopted by the IJA/ABA Joint Commission, the standard does not recommend that the guardian *ad litem* have an independent role in the proceedings. *See* Standards 3.132 and 3.133.

The standard would bar all persons whose interests conflict with those of the juvenile from serving as guardian *ad litem*. This is intended to include the juvenile's parents, guardian, or primary caretaker in neglect and abuse and noncriminal misbehavior proceedings. Similarly, because the guardian *ad litem* is intended to serve as an independent resource to assist in the determination of the child's interests and because agency representatives often have institutional concerns to consider, the standard would prohibit the appointment of such representatives in order to avoid the risk that the child's interests will be confused with or ignored in favor of agency needs. Unlike the IJA/ABA, *Pretrial Court Proceedings, supra,* but in accord with the recommendations of the *Report of the Task Force, supra,* the standards would allow a juvenile's attorney to serve as guardian *ad litem. See also* U.S. Department of Health, Education and Welfare, *Draft Model Child Protection Act,* Section 25, (1976); *but see* A. Sussman and S. Cohen, *The Model Child Abuse and Neglect Reporting Law,* Section 15 (1975). Although as noted by the Supreme Court of Vermont, "a lawyer attempting to function as both guardian *ad litem* and legal counsel is cast in the quandry of acting as both attorney and client, to the detriment of both capacities and the possible jeopardizing of the infant's interests," *In re Dobson,* 125, Vt. 165, 168, 212 A.2d 620, 622 (1965), the National Advisory Committee concluded that the experience with guardians *ad litem* in family court proceedings is not sufficient to determine the practical effects of this apparent conflict and, therefore, that an absolute ban is not appropriate. However, nothing in the standard is intended to discourage appointment of relatives whose interests are not adverse to those of the juvenile or concerned individuals from religious, academic, community services, or volunteer organizations to serve as guardians *ad litem*. Because in many instances a person so appointed will be unfamiliar with the duties, responsibilities, and role of a guardian *ad litem,* these matters should be explained by the family court at the time of appointment.

Related Standards

2.247 Procedures Applicable to the Interrogation of Juveniles
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parent
3.134 Role of Counsel
3.171 Rights of the Parties

3.17 Adjudication Procedures

3.171 Rights of the Parties

In addition to the right to counsel, the right to a public proceeding, and the right to appeal specified in Standards 3.131, 3.132, 3.133, 3.172, and 3.191, the parties to matters filed pursuant to the jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse should be entitled:

- **a. To receive prior notice of all proceedings;**
- **b. To be present at all proceedings;**
- **c. To compel the attendance of witnesses;**
- **d. To present evidence and confront and cross-examine witnesses;**
- **e. To have an impartial decision maker; and**
- **f. To have all the other rights accorded to defendants in criminal cases except for the right to indictment by a grand jury, the right to a trial by jury, the right to bail, and in neglect and abuse cases, the right to have the allegations proven beyond a reasonable doubt.**

A verbatim record should be made of all proceedings.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 12.3 and 13.4 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Adjudication*, Standard 2.1 (tentative draft, 1977), *Standards Relating to Counsel for Private Parties*, Standard 2.3 (tentative draft, 1977), and *Standards Relating to Neglect and Abuse*, Standards 5.1 and 5.3(d) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Adjudication*, IJA/ABA, *Private Parties*, and IJA/ABA, *Neglect*, respectively].

Commentary

This standard sets forth the basic due process and other rights which should be accorded individuals whose liberty or fundamental interests are being challenged by the government. It is intended to apply throughout delinquency, noncriminal misbehavior, and neglect and abuse proceedings, not merely during the adjudication stage.

In a series of decisions over the past fifteen years, the Supreme Court has begun to spell out the rights to which a juvenile in a delinquency proceeding is entitled. In *In re Gault*, 387 U.S. 1 (1967), the Supreme Court held that juveniles are entitled to "fundamental fairness" and that adjudication hearings in delinquency cases are to be measured against due process standards. *See also United States v. Kent*, 383 U.S. 541 (1966). Specifically, the Court held that:

> due process requires adequate, timely, written notice of the allegations against the respondent. Juveniles, in all cases in which they are in danger of loss of liberty because of commitment, are to be accorded, on due process grounds, the right to counsel, the privilege against self-incrimination, and the right to confront and cross-examine opposing witnesses under oath. M. Paulsen and C. Whitebread, *Juvenile Law and Procedure* (1974).

Subsequently, in *In re Winship*, 397 U.S. 358 (1970), the Court applied the "beyond a reasonable doubt" standard of proof to delinquency matters, and in *Breed v. Jones*, 421 U.S. 519 (1975), it held that an adjudicated delinquent could not be retried as an adult for an offense that formed the basis of the delinquency proceeding. However, as is discussed in more detail in Standard 3.173, the Court has also concluded that juveniles do not have a federal constitutional right to a trial by jury in delinquency proceedings. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971).

Virtually all states provide for the right to appeal from delinquency adjudications by rule or statute. *See* Standard 3.191. A 1975 review of state juvenile codes indicated that almost three-fourths of the states statutorily provide for notice; almost half entitle juveniles to compulsory process; at least twenty-one states currently have rules or statutes providing some form of the right against self-incrimination; seventeen states provide a right to a transcript of the proceedings; fifteen states entitle accused delinquents to call and cross-examine witnesses; and ten states apply the right against unreasonable search and seizure to delinquency proceedings. H. Beaser, *Runaway Youth: From What to Where*, 92, 119-124 (1975). Many additional states provide for one or more of these rights through judicial decree.

On the basis of these decisions and statutory provisions, and in accord with the recommendations of the IJA/ABA, *Adjudication, supra,* and the *Report of the Task Force, supra,* this standard provides that juveniles accused of committing an act of delinquency should be afforded the rights to notice to be present at all proceedings, to compulsory process, to call and cross-examine witnesses, and to an impartial decision maker, in addition to the rights to counsel, to an open proceeding, and to appeal specifically addressed in Standards 3.132, 3.172, and 3.191. The right to be present at the proceedings is not intended to imply that adjudication hearings, once begun, must be suspended if respondents absent themselves voluntarily, *see* IJA/ABA, *Adjudication, supra* at Standard 1.3, or that respondents may not be excluded if they continually disrupt the proceedings. *Illinois v. Allen,* 397 U.S. 337 (1970). In view of the right to an impartial decision maker and the absence of a jury, judges who learn the facts of the case or information regarding the respondent's prior record and background prior to the adjudication hearing, e.g., at a detention review hearing under Standard 3.155, should ordinarily excuse themselves if asked to do so. *See Report of the Task Force, supra.*

The standard also provides for the preparation of a verbatim record of all proceedings. Upon request, this record or any portion thereof should be transcribed for use on appeal. *See* Standard 3.192. With three exceptions, accused delinquents should also be afforded the other rights to which criminal defendants are entitled—e.g., the rights against double jeopardy, *Breed;* against self-incrimination, *In re Gault,* and against unreasonable search and seizure. *See, e.g., In re Marsh,* 40 Ill. 2d 53, 237 N.E. 2d 529 (1968); *Lowry,* 95 N.J. at 307, 320 A.2d at 907; *In re B.M.L.,* 506 P.2d 409 (Colo. App. 1973); *Report of the Task Force, supra* at Standard 12.6. The first of these exceptions is the right to indictment by a grand jury. As is noted in the Commentary to Task Force Standard 12.3, "the right to indictment by a grand jury which exists in many jurisdictions is a costly and anachronistic device which few suggest should be extended to juvenile delinquency proceedings." Moreover, Standards 3.155, 3.157, and 3.165 recommend procedures that in many ways provide a substitute for the screening functions that grand juries are intended to serve. The second exception is the right to a trial by jury. *Accord, McKiever; Report of the Task Force, supra;* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 29 (1975); *but see* IJA/ABA, *Adjudication, supra.* The reasons underlying this exception are discussed in the Commentary to Standard 3.173. The third exception is the right to bail. The Commentary to Standard 3.151 explains the basis for excluding bail as a means for releasing a juvenile from detention and the procedures proposed to safeguard the interests that the right to bail are intended to protect. *Accord, Report of the Task Force, supra;* IJA/ABA, *Interim Status, supra* at Standard 4.7.

As is noted earlier, the standard is not limited to delinquency cases. With the exception of the level of proof required to sustain the allegations in a neglect or abuse petition, *see* Standard 3.174, it recommends that the same spectrum of rights be afforded to persons accused of engaging in noncriminal misbehavior, or neglecting or abusing a child. Currently, in states that include running away, truancy, and other forms of noncriminal misbehavior within the scope of the jurisdiction over delinquency, little differentiation is made in the rights provided juveniles accused of committing acts that would be a crime if committed by an adult and those accused of committing a "status offense." *See Beaser, supra.* In jurisdictions that distinguish between delinquency and noncriminal misbehavior the situation is not as clear, although many extend basic due process guarantees to juveniles involved in both types of cases. With regard to neglect and abuse, many states already provide at least some due process rights to parents and juveniles involved in such cases. *See* cases cited in E. Browne and L. Penny, *The Nondelinquent Child in Juvenile Court: A Digest of Case Law,* 32-56 (1974); *see also* Commentary to Standard 3.133. The Task Force did not address these issues beyond provision of the right to counsel, notice, and a hearing. *Report of the Task Force, supra.* The IJA/ABA Joint Commissison went somewhat further, recommending that the parties in neglect and abuse cases be afforded the rights to notice, presence, counsel, compulsory process, and trial by jury. IJA/ABA, *Neglect, supra.*

In *Goldberg v. Kelly,* 397 U.S. 254, 263 (1970), the Supreme Court commented that:

> The extent to which procedural due process must be afforded the [individual] is influenced by the extent to which he may be condemned to suffer grievious loss and depends upon whether the [individual's] interest in avoiding that loss outweighs the [institutional] interest in summary adjudication.

The National Advisory Committee concluded that a juvenile's loss of liberty following a noncriminal misbehavior adjudication constitutes a "grievous loss," even though that juvenile would not be placed in a secure detention or correctional facility, *see* Standard 3.183; that infringement upon a parent's "natural right" to control and supervise his/her children following adjudication of a noncriminal misbehavior or neglect or abuse petition constitutes a "grievous loss," *see Griswold v. Connecticut,* 381 U.S. 479 (1965); *Stanley v. Illinois,* 405 U.S. 645 (1972); that enhancing the opportunity for all parties to be fairly heard will not destroy the purpose, promptness, or effectiveness of family court proceedings; and, therefore, that "the interest in avoiding that loss outweighs . . . the interest in a summary proceeding." Practically speaking, there appears to be no sound basis for permitting a juvenile brought before the court for being truant, or parents accused of abusing their child, to be required to testify against themselves or to be subject to a second prosecution based on the same conduct, while protecting accused delinquents from being compelled to incriminate themselves and from being placed twice in jeopardy. On the other hand, there is good reason to believe that by increasing the actual and perceived fairness of the juvenile justice system, the application of those rights to delinquency, noncriminal misbehavior, and neglect and abuse cases will substantially strengthen and improve the administration of juvenile justice.

Related Standards

2.234 Form of Citation, Summons, and Order to Take Into Custody
2.242 Procedures Following a Decision to Refer to Intake—Delinquency (Law Enforcement Agencies)
2.243 Procedures Following a Decision to Refer to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.244 Procedures Following a Decision to Refer to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.245 Procedures When a Juvenile is in Need of Immediate Medical Care (Law Enforcement Agencies)
2.247 Procedures Applicable to the Interrogation of Juveniles (Law Enforcement Agencies)
2.248 Form of Complaint
2.342 Procedures Following Referral to Intake (Nonlaw Enforcement Agencies)
2.343 Procedures Upon Taking a Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
2.344 Procedures When a Juvenile is in Need of Immediate Medical Care (Nonlaw Enforcement Agencies)
3.116 Transfer to Another Court—Delinquency
3.131 Representation by Counsel—For the State
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parents
3.134 Role of Counsel
3.146 Intake Investigation
3.147 Notice of Decision
3.155 Initial Review of Detention Decisions
3.156 Review of the Conditions of Release
3.157 Initial Review of the Conditions of Release
3.158 Review, Modification, and Appeal of Detention Decisions
3.164 Petition and Summons
3.165 Determination of Probable Cause
3.166 Arraignment
3.167 Discovery
3.168 Motion Practice
3.172 Public and Closed Proceedings
3.173 Finder of Fact
3.174 Burden and Level of Proof
3.176 Uncontested Adjudications
3.186 Predisposition Investigations
3.188 Dispositional Hearings
3.189 Review and Modification of Dispositional Decisions
3.1810 Enforcement of Dispositional Orders—Delinquency
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812 Enforcement of Dispositional Orders—Neglect and Abuse
3.1813 Enforcement of Dispositional Orders—Neglect and Abuse
3.191 Right to Appeal
3.192 Right to Counsel and Accord of the Proceedings
3.2 Noncourt Adjudicatory Proceedings
4.33 Imposition and Enforcement of Regulations
4.47 Notice of Rules
4.54 Disciplinary Procedures
4.71 Transfers from Less Secure to More Secure Programs
4.73 Transfers Among Agencies
4.81 Grievance Procedures
4.82 Ombudsman Programs

3.172 Public and Closed Proceedings

At the beginning of their initial appearance before the family court, subjects of a delinquency, noncriminal misbehavior, or neglect and abuse complaint or petition should be informed by the family court judge that they have a right to have the proceedings open to the public and that if they waive this right, all proceedings will be closed to everyone but the judge, necessary court personnel, the parties, their counsel and families, and other persons approved by the court.

If closed proceedings are requested, all persons other than those listed above should be excluded from the courtroom, and the persons allowed to remain as well as witnesses should be instructed not to divulge the identity of the subject of the complaint or petition and his/her family.

Written voluntary guidelines should be developed by the news media in consultation with the family court to outline the items related to family court proceedings that are and are not generally appropriate for reporting.

On a motion by any party or on their own initiative, family court judges should be authorized to close the proceedings temporarily to protect a witness from emotional duress. Family court judges should also be authorized to exclude individuals who are creating distractions or disturbances from the courtroom.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Adjudication,* Standards 6.1 and 6.2(a) and (d) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Adjudication*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 12.3 (1976) [hereinafter cited as *Report of the Task Force*]; *Nebraska Press Association v. Stuart,* 427 U.S. 539 (1976).

Commentary

In his concurring opinion in *Nebraska Press Association v. Stuart,* 427 U.S. at 000 Justice Brennan commented that:

> Secrecy of judicial action can only breed ignorance and distrust of courts and suspicion concerning the competence and impartiality of judges; free and robust reporting, criticism, and debate can contribute to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and accountability. *See also McKeiver v. Pennsylvania,* 403 U.S. 528 (1971) (Justice Brennan, concurring).

Following this reasoning, the IJA/ABA, *Adjudication, supra,* and the *Report of the Task Force, supra* both recommend that respondents be entitled to open at least delinquency proceedings to the public. The major objection against open hearings in family court proceedings has been the notoriety and publicity to which a juvenile and family may be subject, and the destruction of the "case work" atmosphere which has characterized the juvenile court. Most states currently permit only limited public access to juvenile or family court proceedings. A few provide broader access but attempt to limit publication of the juvenile's name.

On the other hand, it has been argued that closing proceedings to public view may encourage some judges to become lax in their application of the law, that rights should not be dependent upon unproven policy considerations, and that opening family court hearings will generate community support for the family court. *See, e.g.,* D. Besharov, *Juvenile Justice Advocacy,* 290-291 (1974); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 38-39, and 86 (1967); L. Arthur and W. Gauger, *Disposition Hearings: The Heartbeat of the Juvenile Court,* 51 (1974); *RLR v. State,* 487 P.2d 27 (Aka., 1971).

The National Advisory Committee, on the basis of these arguments and the *Nebraska Press Association* decision, concluded that the respondent should have the option of opening or closing the proceedings to the general public. Accordingly, the standard recommends that persons subject to jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse should be advised of their right to choose between having the proceedings closed or open at their first appearance before the court. For persons in custody, the first appearance will be a detention hearing within twenty-four hours of arrest. *See* Standard 3.155. For persons not in custody, the first appearance before the family court will usually be at the arraignment proceeding, unless a hearing to review the conditions of release or to determine probable cause has been held prior to the filing of the petition. Standards 3.156, 3.163, and 3.166. The term "open to the public" is intended to mean open to anyone who wishes to attend including the press. The term "closed proceeding" is intended to mean that hearings will be open to the judge, court personnel (e.g., court reporter and clerk), the parties, their family and counsel, and persons with a special interest in attending who have received specific permission to be present from the family court—e.g., researchers or students studying the operation of the family court. *See Report of the Task Force, supra;* IJA/ABA, *Adjudication, supra* at Standard 6.2(b); U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 29(c) (1975). So that the parties are made fully aware of the implications of each choice, it is recommended that the judge notify them as to who is included in a closed session.

Witnesses are not included in the list of persons automatically admitted as spectators to closed proceedings, because in many jurisdictions, witnesses are often excluded from the courtroom at the request of the parties in order to reduce the possibility that they may consciously or unconsciously alter their stories to conform to prior testimony. In reviewing a request to exclude witnesses when the respondent has opted for an open hearing, the judge should determine that there is reasonable likelihood that accurate fact finding cannot be achieved without prohibiting witnesses from watching the proceedings.

When the subject of a complaint or respondent to a petition has opted for a closed proceeding, the judge should direct the persons present and witnesses not to disclose the identity of the juvenile and the juvenile's family outside the courtroom. The similiar provisons in the standards approved by the IJA/ABA Joint Commission and in the *Model Act for Family Courts, supra* do not exclude the press from such an order or direction. However, the imposition of a ban on publication of information available to the public was held to be a prior restraint violating the First Amendment of the Constitution except when no alternative measure would "sufficiently mitigate the adverse effects of the pretrial publicity." *Nebraska Press Association,* 427 U.S. at 569. *See also Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469 (1975). Although the reasons underlying the prohibitions against identifying juveniles and their families are not the same as those involved in the *Nebraska Press Association* case, and the Court has specifically refrained from deciding whether proceedings may be closed, *id.* at 576, fn. 3, 584, fn. 11 (Justice Brennan concurring), and the extent to which public access to juvenile records may be limited, *Cox Broadcasting Corp.,* 420 U.S. at 496, fn. 26, the strong policy evidenced in those cases against imposing prior restraints on publication indicates that the *parens patriae* philosophy cannot supercede the guarantees of the First Amendment. Hence, the standard, following the suggestion in *Sheppard v. Maxwell,* 384 U.S. 333, 360-361 (1966) limits the controls over identification of juveniles and their families to those persons present in closed proceedings—i.e., the parties, their counsel and families, court personnel, witnesses and other persons admitted with the express permission of the Court. *See Nebraska Press Association,* 427 U.S. at 604 (Justice Brennan concurring); ABA, *Standards Relating to Fair Trial and Free Press,* Section 2.3 (approved draft, 1968).

For open hearings, the standard endorses the development of voluntary guidelines by the media and the family court. Such guidelines should reflect the "fiduciary-like" duty of the press to exercise the protected rights responsibly. *Nebraska Press Association. See also* President's Commission, *supra* at 39. It is anticipated that as such guidelines are established throughout the United States, the problem foreseen by the court of violations by out-of-state reporters in sensational cases will be significantly diminished. *Nebraska Press Association,* 427 U.S. at 550.

The standard does not adopt the position recommended in the provisions adopted by the IJA/ABA, *Report of the Task Force, supra,* that the respondent be able to select whom he/she wishes to be present. In most instances, only those with a personal interest in the case will be present and having the hearings either open to all or closed except to a clearly designated few relieves the family court judge of delicate decisions regarding observation by the media in cases that are nominally open to the public. However, the standard does provide for temporary closure of the hearing to protect the emotional health of a particular witness—e.g., a rape victim or young victim of sexual abuse. *See Report of the Task Force, supra,* and for expulsion of persons who disrupt the proceedings. IJA/ABA, *Adjudication, supra; Report of the Task Force, supra.*

Related Standards

1.53	Confidentiality of Records
3.155	Initial review of Detention Decisions
3.156	Review of Conditions of Release
3.157	Initial Review of Emergency Custody Decisions
3.165	Determination of Probable Cause
3.166	Arraignment Procedures
3.171	Rights of the Parties
3.188	Dispositional Hearings

3.173 Finder of Fact

Contested adjudicatory hearings in delinquency, noncriminal misbehavior, and neglect and abuse cases should be conducted by a family court judge without a jury.

Sources:

U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 29(a) (1975); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 13.4 (1976) [hereinafter cited as *Report of the Task Force*]; National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* Section 14.4 (1973) [hereinafter cited as *Courts*].

Commentary

The standard recommends against jury trials in delinquency, noncriminal misbehavior, and neglect and abuse cases. This follows the Supreme Court's decision in *McKeiver v. Pennsylvania,* 402 U.S. 528 (1971) that jury trials are not constitutionally required in delinquency cases.

The IJA/ABA Joint Commission has recommended jury trials in both delinquency and neglect and abuse cases in order to assure, *inter alia,* that intervention into the lives of a child and family reflects "widely shared community norms," and about a third of the states provide by statute or decision for a right to jury in delinquency cases, although the right appears to be exercised relatively infrequently. Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Abuse and Neglect,* Standard 5.3(e)(i) (tentative draft, 1977), and *Standards Relating to Adjudication,* Standard 4.1 (tentative draft, 1977); see also, *RLR v. State,* 487 P.2d 27 (Aka., 1971); Wisconsin Council on Criminal Justice, *Special Study Committee on Criminal Justice Standards and Goals,* Sub-Goal 12.13 (1975). However, the National Advisory Committee concluded that the accountability and protections offered by juries could be secured by allowing family court proceedings to be open to the public and by specifically applying the right to an impartial decision maker to family court proceedings, without introducing the rigidity and delay that jury trials inevitably foster. *See* Standards 3.171 and 3.172; *see also McKiever,* 402 U.S. at 550; *Report of the Task Force, supra; Model Act for Family Courts, supra; Courts, supra;* President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 38 (1967).

Related Standards

3.124	Use of Quasi-Judicial Decision Makers
3.171	Rights of the Parties
3.172	Public and Closed Proceedings

3.174 Burden and Level of Proof

In contested delinquency and noncriminal misbehavior cases, the state should bear the burden of proving the allegations in the petition beyond a reasonable doubt.

In contested neglect and abuse cases, the state should bear the burden of proving the allegations in the petition by clear and convincing evidence.

Source:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 13.4, 13.5, and 13.7 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Adjudication*, Standards 4.3 (tentative draft, 1977), and *Proposed Standards Relating to Neglect and Abuse*, Standard 5.3(e) (ii) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Adjudication*, and IJA/ABA, *Neglect*, respectively].

Commentary

This standard assigns the burden of proof and sets the level of proof required for the three types of adjudicatory hearings discussed in these standards. In contested delinquency proceedings, the burden is on the prosecution to prove the allegations in the petition beyond a reasonable doubt. This follows the constitutional requirements set down in *In re Winship*, 397 U.S. 358 (1970). The standard recommends that the same level of proof apply to noncriminal misbehavior proceedings. This follows the practice in about a quarter of the states and the recommendation of the National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act*, Section 29(b) (1968). Allowing allegations of noncriminal misbehavior to be proven by a preponderance of the evidence has often encouraged use of the family court's jurisdiction over noncriminal misbehavior when the evidence supporting a delinquency complaint or petition appears weak. This distorts the purposes of both types of jurisdiction. The *Report of the Task Force, supra* did not specify the level of proof applicable in noncriminal misbehavior cases. Its provision requires that "the family court should determine whether each of the facts alleged in the petition is true," and that "there should not be a designation of fault attached to these determinations." *Report of the Task Force, supra*, at Standard 10.2 The IJA/ABA Joint Commission did not address this issue because it recommends elimination of family court jurisdiction over noncriminal misbehavior. *See also* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts*, Section 32 (1975)

For neglect and abuse proceedings, the standard endorses the position adopted by the *Report of the Task Force, supra*, the IJA/ABA, *Neglect, supra*, the *Model Act for Family Courts, supra*, and the *Uniform Juvenile Court Act, supra*. Neglect and abuse cases are not easily classified as either civil or criminal. On the one hand, the fundamental right of parents to raise their children is being challenged by the state. *See Stanley v. Illinois*, 405 U.S. 645 (1972). On the other hand, the purpose of this intervention is protective, not punitive. Accordingly, neither the preponderance of the evidence nor the beyond-a-reasonable-doubt levels of proof appear to be appropriate. Given the nature of the rights being challenged and the possible harm to the child from unwarranted intervention, preponderance of the evidence appears to be too low, but in light of the difficulties of proof, especially when young children are involved, the beyond-a-reasonable-doubt level of proof does not provide adequate protection for the child. Hence, the standard recommends that the state must present clear and convincing evidence that the juvenile is endangered in any of the ways specified by Standard 3.113. *Cf. Addington v. Texas*, 441 U.S. 418 (1979).

Related Standards

3.131 Representation by Counsel—For the State
3.171 Rights of the Parties
3.173 Finder of Fact

3.175 Plea Negotiations

All forms of plea negotiations, including negotiations over the level of charging as well as over the disposition, should be eliminated from the family court process. Under no circumstances should the parties engage in discussions for the purpose of agreeing to exchange concessions by the prosecutor for an admission to the allegations in the complaint or petition.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 13.1 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* Standard 3.1 (1973) [hereinafter cited as *Courts*].

Commentary

Although plea bargaining has not been as prevalent in delinquency and noncriminal misbehavior proceedings as it has in adult criminal cases, it is becoming increasingly common. *See* D. Basharov, *Juvenile Justice Advocacy,* 311 (1974). Despite approval of the practice by the Supreme Court, *Santobello v. New York,* 404 U.S. 257 (1971), debate over the propriety and impact of plea negotiation continues. Proponents of plea bargaining including the President's Task Force Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (1967); the ABA, *Standards Relating to Pleas of Guilty* (approved draft, 1968); and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to the Prosecution Function,* Standards 5.1-5.4 (tentative draft, 1977), suggest that plea negotiation promotes rehabilitation through facilitating the imposition of less stringent correctional measures better suited to the provision of treatment and by encouraging defendants to face up to their guilt; speeds the adjudicative process; adds flexibility while allowing both the state and the defendant to reduce the risk inherent in trial and sentencing; and conserves the resources of the criminal justice system. They argue that many of the problems cited by the opponents of plea bargaining can be alleviated through careful oversight and regulation.

Opponents of plea bargaining, such as *Courts, supra,* and *Report of the Task Force, supra,* contend that the process is inherently coercive, because prosecutors are inevitably led to "overcharge" in order to gain a superior bargaining position and judges tend to reward individuals who foresake their right to trial with more lenient sentences; that it allows jurisdiction to secure the inadequacy of their criminal justice systems and attorneys to evade their eithical duties; that it reduces the rationality and equity of the adjudication and dispositional process; that it impairs rehabilitation by reducing respect for that process; and that these problems cannot be cured by even the most rigorous of procedural safeguards. *See also* Alschuler, "The Defense Attorney's Role in Plea Bargaining," 84 *Yale L. J.* 1179 (1975); Alschuler, "The Prosecutor's Role in Plea Bargaining," 36 U. Chi. L. Rev. 50 (1968); J. Casper, *American Criminal Justice: The Defendant's Perspective* (1972).

After careful consideration of these contrasting views, the National Advisory Committee concluded that plea negotiation, in any form, would be detrimental to the fairness and effectiveness of the juvenile justice process. It concluded further that because most jurisdictions do not rely on plea bargaining as the basic mode for disposing of delinquency, noncriminal misbehavior, and neglect and abuse cases, there is a real opportunity for the juvenile justice system to avoid the inequities that result from dependence on obtaining negotiated pleas.

One traditional argument in favor of plea bargaining has been that the increase in trials, which would result from its elimination, would quickly overwhelm already overburdened courts, prosecutors, and defense attorneys. However, a number of jurisdictions have apparently succeeded in reducing the amount, or at least the types, of plea bargaining taking place, without suffering a collapse of their criminal justice systems. The intense case-screening procedures already provided in Standards 3.141-3.147, and 3.163 should assist family courts and the family court section of prosecutors' offices in handling the caseload pressures without resorting to wholesale plea negotiation.

The standard is not intended to preclude admissions to the allegations in delinquency, noncriminal misbehavior, and neglect and abuse petitions. Indeed, as is indicated by Standard 3.176, it is anticipated that a significant number of cases will be adjudicated in this manner. It is directed, however, at eliminating admissions which are the result of or in exchange for an agreement by the prosecutor to reduce or drop a charge, to change a delinquency petition to a noncriminal misbehavior or neglect and abuse petition, or to recommend a particular disposition. If such action by the family court section of the prosecutor's office is warranted, it should be taken without a *quid pro quo* from the respondent. The recommendation in this standard is all the more significant in view of the increased pressure to plea bargain, which will arise as a result of the structured dispositional system proposed for delinquency cases in Standards 3.181 and 3.182.

Those standards and the other provisions contained in this volume attempt to balance the often competing interests of the juvenile, the parents, and the community; to encourage consistency without sacrificing flexibility; and to safeguard the rights of each of the parties. In the opinion of the National Advisory Committee, plea bargaining can only disrupt this balance, undermine these safeguards, and seriously impair the administration of juvenile justice.

Related Standards

3.131 Representation by Counsel—For the State
3.132 Representation by Counsel—For the Defendant
3.133 Representation by Counsel—For the Parents
3.134 Role of Counsel
3.171 Rights of the Parties
3.176 Uncontested Adjudications
3.177 Withdrawal of Admissions

3.176 Uncontested Adjudications

Before accepting an admission to the allegations in a petition, the family court judge should inquire thoroughly into the circumstances of that admission. The inquiry should be on the record and should include:

- **a. A determination that a respondent for whom a guardian *ad litem* has not been appointed is able to understand the nature and consequences of the admission;**
- **b. A determination that the respondent does understand the nature and consequences of the admission;**
- **c. A determination that the admission is not the result of any promise, inducement, bargain, force, or threat;**
- **d. A determination that the respondent has received effective assistance of counsel; and**
- **e. A determination that there is a factual basis for the allegations.**

Before making the determination described in paragraph (b), the judge should explain in language calculated to communicate effectively with the respondent: the allegations, the rights to which the respondent is entitled, the effect of the admission upon those rights, and the most restrictive disposition that could be imposed.

Before making the determination described in paragraph (c), the judge should explain to the respondent that negotiated admissions are prohibited and are not binding on the court, and should ask the respondent, his/her attorney, and the attorney for the state whether any agreements have been made. No admission resulting from an agreement should be accepted.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 13.2 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Adjudication,* Standards 3.1-3.6 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Adjudication*].

Commentary

Despite the prohibition on plea negotiations proposed in Standard 3.175, it is anticipated that many respondents will wish to admit the allegations in the petition, thereby waiving a number of the rights set forth in Standard 1.171. This standard recommends a procedure that assures that those waivers are made intelligently and voluntarily. In doing so, it follows the decision of the Supreme Court in *Boykin v. Alabama,* 394 U.S. 238 (1969), by requiring the family court judge to determine, on the record: that the respondent is able to and does understand the effect and possible consequences of the admission, and the rights that are being waived; that the admission is not being made under duress, as the result of a bargain, or on the basis of unwarranted expectations; and that the respondent's attorney has performed his/her responsibilities. The assessment of a juvenile's capacity to understand the meaning and impact of an admission should be based on such factors as the juvenile's age, educational level, reading ability, and prior police and court experience. *See Report of the Task Force, supra* at Commentary to Standard 13.2 The inquiry into whether a respondent has received effective assistance of counsel should include such matters as the number and length of their conferences. *Report of the Task Force, supra,* These determinations should be based on discussion between the judge and the respondent personally. The standard emphasizes that explanations should be in terms that the respondent can understand. This is especially important when the respondent is a juvenile. Interpreters should be provided for non-English speaking respondents.

The standard also recommends that before accepting an admission, the judge should be satisfied that there is substantial reason to believe the allegations are true. *See* ABA, *Standards Relating to Pleas of Guilty* (approved draft, 1968); National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* Section 3.1 (1973). [hereinafter cited as *Courts*] The factual basis can be demonstrated through an offer of proof by the attorney for the state of the evidence that would be introduced if the case were contested or by judicial questioning of the respondent. *See* IJA/ABA, *Adjudication, supra* at Standard 3.5. In some instances, the transcript of the probable cause determination may be introduced. *See* Standards 3.116, 3.155, 3.157, and 3.165.

Finally, the standard includes a mechanism for enforcing the prohibition on plea negotiations. *See* Standard 3.175; *Report of the Task Force, supra* at Standard 13.1; *Courts, supra* at Section 3.1; *but see* IJA/ABA, *Standards Relating to the Prosecution Function,* Standards 5.1-5.4 (tentative draft, 1977); ABA, *Standards Relating to Pleas of Guilty, supra.* The statement of counsel regarding the absence of plea negotiations should be included in the record of the proceeding. It is anticipated that attorneys will be subject to disciplinary proceedings if it is later shown that a plea agreement had been made.

Related Standards

2.247 Procedures Applicable to the Interrogation of Juveniles
3.131 Representation by Counsel—For the State
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parents
3.134 Role of Counsel
3.166 Arraignment Procedures
3.171 Rights of Counsel
3.174 Burden and Level of Proof
3.175 Uncontested Adjudications
3.177 Withdrawals of Admissions

3.177 Withdrawals of Admissions

Respondents should be permitted to withdraw an admission for any fair and just reason prior to disposition of their case. Following disposition, respondents should be permitted to withdraw an admission whenever it is proven that the admission was not made competently, voluntarily, or intelligently, or that withdrawal of the admission is necessary to correct any other manifest injustice.

An admission that is not accepted or that has been withdrawn, and any statement by the respondent during the acceptance procedure set forth in Standard 3.176, should not be admissible in any subsequent proceeding.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 13.3 (1976) [hereinafter cited as *Report of the Task Force*]; National Advisory Committee on Criminal Justice Standards and Goals, *Courts,* Section 3.7 (1973) [hereinafter cited as *Courts*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Adjudication,* Standards 3.8 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Adjudication*]; ABA, *Standards Relating to Pleas of Guilty,* Section 2.1 (approved draft, 1968) [hereinafter cited as ABA, *Pleas of Guilty*].

Commentary

This standard specifies the circumstances in which respondents should be permitted to withdraw an admission to the allegations in a delinquency, noncriminal misbehavior, or neglect and abuse petition. Although the standard recommends a liberal policy toward withdrawals prior to the disposition hearing, it is anticipated that few respondents will seek to retract the admissions made during the careful colloquy proposed in Standard 3.176. *See Report of the Task Force, supra.* This is especially true in light of the prohibition against plea negotiations recommended in Standard 3.175. The standard would, however, permit a withdrawal based on discovery of evidence that would enhance the possibility of acquittal or of collateral consequences of adjudication that the respondent wishes to avoid.

Following disposition, the standard recommends that withdrawal should be permitted only upon a showing that the waiver of the respondent's rights did not meet the constitutional requirements set down in *Boykin v. Alabama,* 394 U.S. 238 (1969); *see also Johnson v. Zerbst,* 304 U.S. 458 (1938); or to correct some other "manifest injustice"—e.g., demonstrated ineffective assistance of counsel. This follows the position adopted by the *Report of the Task Force, supra. See also* ABA, *Pleas of Guilty, supra* at Standard 2.1. The provision approved by the IJA/ABA Joint Commission is similar except for a section allowing withdrawal when the state fails to comply with the terms of the plea bargain. IJA/ABA, *Adjudication, supra; Santobello v. New York,* 404 U.S. 257 (1971); *see* Standard 3.175.

The recommendation that an admission that has been withdrawn or statements made by the respondent during the acceptance procedure should not be admissible against the respondent in subsequent proceedings follows the recommendations of *Courts, supra,* and the ABA, *Pleas of Guilty, supra,* as well as the *Report of the Task Force, supra.* As noted by *Courts, supra* at 60: "this minimizes infringements upon interests protected by the fifth amendment without hampering the . . . [plea-acceptance] process."

Related Standards

3.166	Arraignment Procedures
3.171	Rights of the Parties
3.175	Plea Negotiation
3.176	Uncontested Adjudications

3.181 Duration of Disposition and Type of Sanction—Delinquency

All conduct subject to the jurisdiction of the family court over delinquency should be classified for the purpose of disposition into categories that reflect substantial differences in the seriousness of the offense. Such categories should be few in number. The maximum term that may be imposed for conduct falling within each category should be specified.

The types of sanctions that may be imposed for conduct subject to the jurisdiction of the family court over delinquency should be grouped into categories that are few in number and reflect differences in the degree of restraint on personal liberty.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions,* Standard 1.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Disposition*]; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 14.9 and 14.13 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Delinquency and Sanctions,* Standards 5.1-5.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Sanctions*].

Commentary

The degree of dispositional discretion that should be accorded family court judges is one of the major debates in juvenile justice today. Approximately 80 percent of the states permit the juvenile or family court to exercise jurisdiction over a juvenile found delinquent until he/she reaches twenty-one, regardless of the offense. *See* National Task Force to Develop Standards and Goals for Juvenile Justice and Delinquency Prevention, *Comparative Analysis of Standards and State Practices: Juvenile Dispositions and Corrections,* 28 (1975). This dispositional scheme is often based on the view that the delinquent act is an indication that the youth is in need of "treatment" and that it is in the youth's best interest for such treatment to continue as long as it is necessary. Most of these states leave the decision of when juveniles should be released from custody or supervision to the public or private agency to which they have been committed.

A number of other states provide that the court may commit a juvenile for an indeterminate period up to a statutory maximum, which is the same for most offenses. Many of these also provide for extensions of the dispositional period. *See National Task Force, supra; see also* Wisconsin Council on Criminal Justice Special Study Committee on Criminal Justice Standards and Goals, *Juvenile Justice Standards and Goals,* Standards 14.1(k)-(m) (2d draft, 1975). National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act,* Section 36(b) (1968); U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 37 (1975).

On the other hand, some commentators have recently proposed a return to a "just desserts" model of mandatory sentences, at least for adult offenders, although the degree of restraint to be imposed would still be decided by the judge. *See., e.g.,* D. Fogel, *We Are the Living Proof: The Justice Model for Corrections* (1975).

Proponents of indeterminate sentencing suggest that such sentences facilitate rehabilitation by motivating the offender with the reward of early release, place the "treatment" and release decisions in the hands of qualified professionals, protect society from hardcore youthful offenders, deter nondelinquent youth, and reduce unnecessary incarceration. *See* E. B. Prettyman, Jr., "The Indeterminate Sentence and the Right to Treatment," 7 Am. Crim. L. Rev. 15-17 (1972). Opponents of indeterminate sentences cite studies that indicate that release or parole decisions are more often based on institutional classificatory schemes and offender characteristics than on individualized progress toward rehabilitation; that offenders, both juvenile and adult, perceive the release or parole decision as made without valid or consistent criteria; and that the indeterminate sentence is open to abuse both by inmates who can "con" their way into early release and by institutional personnel who may wrongfully or arbitrarily withhold release. *Id.* at 17-21.

This standard, together with Standard 3.182, follows the lead of the National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* 575 (1973); the IJA/ABA, *Dispositions, supra;* IJA/ABA, *Sanctions, supra;* and the *Report of the Task Force, supra,* by taking a middle course between these conflicting views. These standards recommend that:

a. Delinquent offenses be grouped into categories according to the relative degree of seriousness;

b. Maximum dispositional time periods be set for each category; (e.g., for offenses in category 1, the term of disposition shall not exceed X years);

c. The type of sanctions be categorized according to the extent to which they restrain the juvenile's liberty (e.g, category (a) out-of-home custody, category (b) probation); but

d. The responsibility for determining the length of disposition within the statutory maximum, the degree of restraint that should be imposed, and the type of program to which the juvenile should be assigned should be retained by the family court judge. In this way, increased equity and consistency in the disposition of delinquency cases can be achieved without sacrificing the family court's ability to fashion a dispositional plan on the basis of the mitigating and aggravating factors of the particular case and the juvenile's needs and interests. *See* Standard 3.182.

To assure that the equity achieved at the dispositional stage is maintained and the intent of the dispositional determination carried out and to increase the visibility and accountability of dispositional decision making, Standards 3.189, 3.1810, and 4.71-4.73 recommend a greater role for the family court than under many current statutes. Reductions in the duration of disposition must be ordered by the family court. *See* Standard 3.189. The same is true for transferring a juvenile from a nonresidential to a residential program. *See* Standards 3.1810 and 4.33. The supervisory agency may shift juveniles between individual programs of the type specified by the court, but any change in the degree of restraint imposed is subject to court review. *See* Standards, 3.182, 3.189, 4.71, and 4.72. In addition, transfers of juveniles from a facility operated by the juvenile corrections to one maintained by a mental health or drug abuse agency require judicial approval following a court hearing. *See* Standard 4.73

Unlike the provisions approved by the IJA/ABA Joint Commission and the *Report of the Task Force, supra,* this standard does not recommend any particular set of categories or maximum terms. Although the National Advisory Committee agreed that the length of dispositions in delinquency cases should never exceed those that an adult could receive for the same conduct, it concluded that the current state of knowledge does not provide a basis for determining which of the classifications that have been proposed is the most appropriate. Each state should decide what are the exact dispositional time limits on the basis of its own needs, problems, and priorities. The IJA/ABA Joint Commission and Task Force proposals are summarized as illustrations of the differing approaches that have been taken on these issues.

The IJA/ABA Joint Commission adopted provisions calling for the division of juvenile offenses into five classes based on the maximum sentence that can be imposed on adults following conviction for similar conduct. Specifically, Class (1) juvenile offenses should include criminal offenses for which the maximum authorized sentence is death or imprisonment for more than twenty years. Class (2) juvenile offenses should include criminal offenses with maximum authorized or sentences of imprisonment for more than five years. Class (3) should include criminal offenses with maximum authorized sentences of imprisonment for more than one year. Class (4) juvenile offenses should include criminal offenses with a maximum authorized sentence of imprisonment for more than six months. And, Class (5) juvenile offenses should include criminal offenses with maximum authorized sentences of imprisonment for six months or less. IJA/ABA, *Sanctions, supra* at Standard 5.2 the IJA/ABA Joint Commission recommended maximum durations for each class of juvenile offenses as in Table 3.1.

Table 3.1. IJA/ABA Joint Commission Recommended Maximum Durations for Custodial and Noncustodial Sanctions

Class	Maximum Duration if Custodial Sanction is Imposed	Maximum Duration if Noncustodial Sanction in Imposed
1	24 months	36 months
2	12 months	24 months
3	6 months	18 months
4	3* months	12 months
5	2† months	6 months

*Confinement in a secure facility only if the juvenile has a prior record—i.e., adjudication for a class (1), (2), or (3) offense committed within twenty-four months of the commission of the current offense, or adjudication of three class (4) or (5) offenses, at least one of which was committed within twelve months of the commission of the current offense.

†Confinement only in a nonsecure facility and only if the juvenile has a prior record as defined above.

Source: IJA/ABA, *Sanctions, supra* at Standard 7.2.

The IJA/ABA standards also suggest that the types of sanctions be divided into three broad categories: nominal, conditional, and custodial. Nominal dispositions include reprimand and release and suspended dispositions. Conditional dispositions include fines, restitution, community service, supervision by a probation officer, day custody programs, and required attendance at educational, vocational, and counseling programs. Custodial dispositions include placement in secure and nonsecure facilities and custody on a continuous or intermittent basis—i.e., only at night, on weekends, or during vacations. IJA/ABA, *Dispositions, supra* at Standard 3.2

The *Report of the Task Force, supra,* proposed four classes of delinquent acts: Class I to include conduct that would be a misdemeanor if committed by an adult: Class II to include crimes against property that would be a felony if committed by an adult; Class III to include crimes against persons and Class II offenses if the juvenile has a prior adjudication for a Class II offense; and Class IV to include acts that if committed by an adult would be punishable by death or imprisonment for over twenty years. The maximum duration for dispositions for each class is as shown in Table 3.2.

Table 3.2. Task Force Recommended Maximum Durations for Dispositions

Class	Normal Duration	Possible Extension*
I	8 months	4 months
II	24 months	6 months
III	36 months	12 months or the juvenile's 21st birthday whichever occurs first
IV	The juvenile's 21st birthday	

*Extensions are permitted only upon a showing of clear and convincing proof that additional community supervision of the juvenile is required for the protection of the public. The juvenile may not be confined during the extension. The total dispositional period should not exceed twelve months for Class I offenses, thirty months for Class II offenses, and forty-eight months or beyond the juvenile's 21st birthday for Class III and Class IV offenses.

Source: *Report of the Task Force, supra* at Standards 14.13 and 14.14.

The Task Force categories for the types of sanctions that may be imposed are nearly identical to those proposed by the IJA/ABA Joint Commission. IJA/ABA, *Dispositions, supra.*

Related Standards

3.111	Jurisdiction Over Delinquency
3.182	Criteria for Dispositional Decisions—Delinquency
3.188	Dispositional Hearings
3.189	Review and Modification of Dispositional Decisions
3.1810	Enforcement of Dispositional Orders—Delinquency
4.11	Role of the State
4.21-4.218	Training Schools
4.219-4.2194	High Security Units
4.22-4.223	Camps and Ranches
4.23-4.234	Group Homes
4.24	Community Correctional Facilities
4.25-4.252	Foster Homes
4.31-4.33	Community Supervision
4.71	Transfers From Less Secure to More Secure Facilities
4.72	Transfers From More Secure to Less Secure Facilities
4.73	Transfers Among Agencies

3.182 Criteria for Dispositional Decisions—Delinquency

In determining the type of sanction to be imposed following adjudication of a delinquency petition and the duration of that sanction within the statutorily prescribed maximum, the family court should select the least restrictive category and time period consistent with the seriousness of the offense, the juvenile's role in that offense, and the juvenile's age and prior record.

After determining the degree of restraint and the duration of the disposition to be imposed, the court should select the type of program or services to be offered on the basis of the juvenile's needs and interests.

In no case should a dispositional order or enforcement thereof allow confinement or committment of a juvenile adjudicated delinquent in a facility in which he/she would have regular contact with adults accused or convicted of a criminal offense.

Source:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions*, Standards 2.1 and 2.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Dispositions*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 14.15 (1976) [hereinafter cited as *Report of the Task Force*]; 42 N.S.C. 5633(a)(13)(Supp. 1979).

Commentary

In establishing maximum sentences for categories of offenses, it is anticipated that the legislature will take into account the harm caused or risked in a typical case. However, no code can articulate the infinite variations of circumstances and characteristics involved in a particular offense. Hence, the standard recognizes that family courts should have discretion to select the actual disposition to be imposed in an individual case.

The standard endorses the procedure adopted by the IJA/ABA, *Dispositions, supra*, and the *Report of the Task Force, supra*, under which the family court judge first determines the minimum degree of restraint and the minimum term within the statutorily set maximum necessary to satisfy society's interests in protection, deterrence, and equity, and then selects, within these bounds, the type of program that best fits the juvenile's needs and interests. This division reflects the multiple purposes that dispositions serve. The decision on the length of disposition and degree of restraint required precedes the determination of the services or program to be provided in order to encourage provision on a full range of services and programs at all level of restraint and to avoid basing custodial decisions on service needs. The standard contemplates that the family court judge will designate the type of program (e.g., foster care, vocational training, or drug treatment), and that the correctional agency will select the specific home, facility, or service to which the juvenile will be directed and develop a more detailed service program plan.

Consistent with the standards on intake, the *Report of the Task Force, supra*, and IJA/ABA, *Dispositions, supra* and the recommendation of the National Advisory Committee on Criminal Justice Standards and Goals, *Corrections* (1973), and other commentators, *see, e.g.*, D. Fogel, *We Are the Living Proof: The Justice Model for Corrections* (1975), among others, this provision establishes a preference for use of the "least restrictive alternative" that is appropriate. This would require the judge to consider and reject the least drastic category of sanctions before considering the next most severe category. Hence, continuous confinement in a secure facility would be "a last resort reserved only for the most . . . serious offenses and repetitive offenders," IJA/ABA, *Dispositions, supra* at Standard 3.3(e) (ii); *Report of the Task Force, supra.* Fourt objective criteria—seriousness of the offense, the juvenile's role in that offense, and the juvenile's age and prior record—are provided to guide the dispositional decision and promote consistency. Many current statutes and models provide little assistance or direction to judges faced with the difficult task of balancing the concerns of society and the needs of the juvenile. *See, e.g.*, National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act*, Section 31 (1968); Department of Health, Education and Welfare, *Model Act for Family Courts*, Section 34 (1975). The four criteria recommended in the standard are intended to promote dispositional consistency and provide a basis for explanation, comparison, and review of dispositional decisons. *See* Standards 3.189 and 3.191. Definitions of each of these appear in the Commentary to Standard 3.143.

Finally in accord with the *Juvenile Justice and Delinquency Prevention Act*, the standard would prohibit placement of a juvenile in any facility, secure or nonsecure, in which the juvenile would be commingled with accused or convicted adult criminal offenders. 42 U.S.C. §5633(a)(13) (Supp. 1979).

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
2.221	Criteria for Referral to Intake—Delinquency (Law Enforcement Agencies)
2.231	Criteria for Taking Juveniles Into Custody—Delinquency (Law Enforcement Agencies)
3.143	Criteria for Intake Decision—Delinquency
3.151	Purpose and Criteria for Detention and Conditioned Release
3.181	Duration of Disposition and Type of Sanction
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.185	Criteria for Termination of Parental Rights
3.186	Predisposition Investigations
3.187	Predisposition Reports
3.188	Dispositional Hearings
3.189	Review and Modification of Dispositional Decisions
3.1810	Enforcement of Dispositional Orders
3.191	Right to Appeal
4.21-4.218	Training Schools
4.219-4.2194	High Security Units
4.22-4.223	Camps and Ranches
4.23-4.234	Group Homes
4.24	Community Correctional Facilities
4.25-4.252	Foster Homes
4.31-4.33	Community Supervision
4.71	Transfers From Less Secure to More Secure Facilities
4.72	Transfer From More Secure to Less Secure Facilities
4.73	Transfers Among Agencies

3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior

In determining the disposition to be imposed following adjudication of a noncriminal misbehavior petition, the family court judge should select the least restrictive alternative and time period consistent with the nature and circumstances of the conduct upon which the adjudication was based; the age, interests, and needs of the juvenile; the interests and needs of the family; the prior contacts of the family with the intake unit and family court; the results of those contacts; and the efforts of public agencies to provide services to the juvenile and his/her family.

The dispositional period in noncriminal misbehavior matters should not exceed six months. However, the family court should be authorized to extend the dispositional period for up to six months, following a hearing at which the same criteria and procedures apply as in the original dispositional hearing. The burden of proof should rest with the state to show by clear and convincing evidence that continuation of the disposition is necessary. Only one extension should be authorized.

The dispositional alternatives in noncriminal misbehavior matters should include orders requiring the provision of programs and services to the juvenile and/or his/her family; cooperation by the juvenile and family with offered programs and services; the continuation or discontinuation of behavior by the juvenile and family; or placement of the juvenile in foster care, a nonsecure group home, or other nonsecure residential facility.

In no case should the dispositional order or the enforcement thereof result in the confinement of a juvenile in a secure detention or correctional facility or institution.

Source:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 14.4 (1976).

Commentary

The standard sets forth the considerations that should apply and the alternatives that should be available for dispositions in noncriminal misbehavior cases. When dealing with dispositions in noncriminal misbehavior cases, it is recommended that the primary concern should be to assist the family in resolving its problem and conflicts and to provide needed services, not to punish. The criteria to be used in making the dispositional decision reflect this family emphasis. For example, the standard recommends that the needs and interests and prior contacts of the family be considered as well as those of the juvenile. *Cf.* Standard 3.182.

One of the most frequently cited abuses of noncriminal behavior dispositions has been that juveniles found to have committed a "status offense" often have their liberty restricted more severely and for longer periods than those adjudicated delinquent. *See, e.g.*, P. Lerman, "Child Convicts," 8 *Transaction*, 35-44 (1971); G. Wheeler, *National Analysis of Institutional Length of Stay* (1974); R. Sarri, R.D. Vinter, and R. Kish, *Juvenile Justice: Failure of a Nation* (1974); *Program Announcement: Deinstitutionalization of Status Offenders*, Attachment A (LEAA, 1975). In order to correct this problem, the standard states that juveniles found to have engaged in noncriminal misbehavior should not be placed in secure correctional or detention facility, that dispositions should be limited to six months unless there is clear and convincing evidence that a continuation is required, that in no event should the duration of the original disposition and any continuation exceed a total of one year, and that the disposition should always be the least restrictive alternative available. It should be noted that the proposed bar on use of secure correctional or detention facility was not intended to prohibit use of group homes or shelter facilities which place some limits on access and egress. *See* 42 U.S.C. §5633(a)(12).

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records

2.222	Criteria for Referral to Intake—Noncriminal Misbehavior (Law Enforcement Agencies)
2.232	Criteria for Taking Juveniles Into Custody—Noncriminal Misbehavior (Law Enforcement Agencies)
2.321	Criteria for Referral to Intake—Noncriminal Misbehavior (Nonlaw Enforcement Agencies)
3.112	Jurisdiction Over Noncriminal Misbehavior
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior
3.153	Criteria for Detention and Release—Noncriminal Misbehavior
3.182	Criteria for Dispositional Decisions—Delinquency
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.185	Criteria for Termination of Parental Rights
3.186	Predisposition Investigation
3.187	Predisposition Report
3.188	Dispositional Hearing
3.189	Review and Modification of Dispositional Decisions
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.191	Right to Appeal
4.23-4.234	Group Homes
4.25-4.252	Foster Homes
4.31-4.33	Community Supervision
4.73	Transfers Among Agencies

3.184 Dispositional Alternatives and Criteria—Neglect and Abuse

Dispositions following adjudication of a neglect and abuse petition should adequately protect the juvenile while causing as little interference as possible with the autonomy of the family. They should be designed to alleviate the immediate danger to the juvenile, to mitigate or cure any harm already suffered, and to aid the juvenile and the juvenile's parents, guardian, or primary caretaker so that the juvenile will not be endangered in the future.

In determining the disposition to be imposed, the family court judge should select the disposition consistent with the nature and circumstances of the neglect or abuse; the age, maturity, interests, and needs of the juvenile; the interests and needs of the family; the prior contacts of the family with the intake unit and family court; the results of those contacts; and the efforts of public agencies to provide services to the juvenile and his/her family.

Dispositional alternatives in neglect and abuse cases should include orders requiring: the provision of services, counseling, therapy or treatment to the juvenile and/or the juvenile's family; cooperation by the juvenile and family with the offered services, counseling, therapy, or treatment; the continuation or discontinuation of behavior by the juvenile or the juvenile's parent, guardian, or primary caretaker; informal or casework supervision; and placement of the juvenile in a daycare program, with a relative, or in a foster home, group home, or residential treatment center.

Juveniles should not be removed from home unless:

a. They have been abused or otherwise endangered as defined in standard 3.113;

b. There is clear and convincing evidence that they cannot be adequately protected from further neglect or abuse unless removed; and

c. Out-of-home placement is less likely to be damaging to the juvenile than allowing the juvenile to remain with his/her family.

If siblings are removed, they should ordinarily be placed together.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standards 6.3 and 6.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 14.25-14.27 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard sets forth the considerations that should apply to and the alternatives that should be available for dispositions in neglect and abuse cases. At the outset, it makes clear that although the purpose of such dispositions should be to protect the juvenile from further harm, every effort should be made to provide that protection without removing the juvenile from his/her home. Hence, the factors listed in the second paragraph of the standard, like those recommended for dispositions in noncriminal misbehavior cases, focus on the family, not just the juvenile, *see* Standard 3.183; a broad range of alternatives in addition to removal are suggested; and the criteria for removal urge that out-of-home placements should be limited to those cases in which no other measure can adequately protect the juvenile from further harm. Unlike most current statutes, the standard does not speak in terms of the "best interest of the child." Although the determination of what measures will provide adequate protection for a child who has been neglected and abused is not a simple one, it is far narrower and less complex than attempts to decipher what the child's best interests are and how they can be most effectively served. *See* IJA/ABA, *Neglect, supra; Report of the Task Force, supra; see also* Mnookin, "Foster Care: In Whose Best Interest," 43 *Harv. Educ. Rev.* 599 (1973).

The alternatives suggested in the third paragraph of the standard stress the provision of counseling, homemaker, or other services to the family. Such services should be designed to address the specific harms that have occurred or the particular dangers that the juvenile faces. As is pointed out in J. Areen, "Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases," 63 *Geo.* L.J. 887, 915, 918-920 (1975), there are strong fiscal as well as psychological advantages in trying to protect children in their own homes. *See* J. Polier, "The Invisible

Legal Rights of the Poor," 12 Children 214, 218 (1965); J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* (1973); IJA/ABA, *Neglect, supra*. In many instances, a team approach may be the most effective means of providing the range of interrelated services that are required.

The recommended restrictions on removal follow from the above arguments; the limits on out-of-home placements contained in the standards on dispositions in delinquency and noncriminal misbehavior cases, *see* Standards 3.181-3.183; and the fact that in many jurisdictions, removal remains the most frequent disposition employed in neglect and abuse cases, and short-term foster care appears to be "the exception rather than the rule." Areen, *supra* at 912-913. The standard recommends that the state must demonstrate with clear and convincing evidence that none of the alternatives short of removal can adequately protect the child. This would constitute a significant change from current practice. It is anticipated that the requirement for such proof will help to direct attention to the need for nonremoval alternatives. Both the IJA/ABA, *Neglect, supra*, and the *Report of the Task Report, supra*, would require a lower level of proof for removal in abuse cases than in neglect cases. *See* IJA/ABA, *Neglect, supra* at Standard 6.4; *Report of the Task Force, supra* at Standard 14.27. Because the danger involved and the inadequacy of any in-home safeguards are usually easier to prove in cases involving abuse, this distinction appears to add unnecessary complexity.

Paragraph (c), together with the review procedures in Standards 3.189 and 3.1812, is intended to insure that a juvenile is not taken from one bad home situation only to be placed in another. *Report of the Task Force, supra;* IJA/ABA, *Neglect, supra.*

The recommendation that if siblings are removed, they should ordinarily be placed in the same foster home, is adopted from the model provisions proposed by Professor Areen. It is intended to preserve family and sibling ties to the greatest extent possible by eliminating the scattering of brothers and sisters among a number of foster homes. Areen, *supra* at 936.

Related Standards

1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Detention of Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.55	Accuracy of Records
2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.33	Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.145	Criteria for Intake Decisions—Neglect and Abuse
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuses Cases
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Neglect and Abuse
3.185	Criteria for Termination of Parental Rights
3.186	Predisposition Investigations
3.187	Predisposition Reports
3.188	Dispositional Hearings
3.1812	Review of Dispositional Orders—Neglect and Abuse
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse
3.191	Right to Apoeal
4.23-4.234	Group Homes
4.25-4.252	Foster Homes
4.31-4.33	Community Supervision

3.185 Criteria for Termination of Parental Rights

The family court should be authorized but not required to terminate parental rights when:

a. A juvenile has been abandoned as defined in Standard 3.113(a);
b. A juvenile has been physically abused as defined in Standard 3.113(b);
c. A juvenile has been removed from the home pursuant to Standard 3.184 and has remained in out-of-home placement for six months or more;
d. A juvenile's parents have previously been found to have neglected or abused that juvenile or another juvenile in the same household; or
e. A juvenile's parents competently, voluntarily, and intelligently consent.

Parental rights should not be termined if: termination would be detrimental to the juvenile because of the closeness of the parent-child relationship; the juvenile has been placed in a residential facility because of his/her physical or mental health problems and termination is not necessary to provide a permanent family home; the juvenile has been placed with a relative who does not wish to adopt him/her; the juvenile cannot be placed in a family environment; or the juvenile objects.

Following termination, the judge should be authorized to order the juvenile to be placed for adoption; placed with a legal guardian; or if no other alternative is available, placed in long-term foster care. The case should be reviewed by the family court each year until a permanent placement has been made.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse*, Standards 8.2(b), 8.4, and 8.5 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 14.32 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard describes the situations in which the family court should consider terminating a juvenile's legal relationship to his/her parents, thus making the juvenile eligible for adoption; the factors that should tilt the balance against termination even though the basic conditions are present; and the procedures that should be utilized to increase the chances that a juvenile will have the opportunity to grow up in a stable family environment.

Termination of parental rights presents many difficult issues. On the one hand, the Supreme Court has recognized a parent's "natural right" to control and supervise his/her children, *Griswold v. Connecticut*, 381 U.S. 479 (1965), although this right is not absolute, *see Prince v. Massachusetts*, 321 U.S. 158 (1944), and various commentators have pointed out that removing a juvenile from even neglectful or abusing parents can have a detrimental emotional impact on the child. *See* J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* (1973); J. Bowlby, *Child Care and the Growth of Love* (1965). On the other hand, as is pointed out by J. Areen, "Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases," 63 *Geo. L.J.* 887, 928 (1975):

> [S]ome parents who are unwilling to assume the care of their own children also are unwilling to consent to their adoption, [or] . . . cannot be located.

Most states currently provide for a waiver of the natural parents' rights at an adoption proceeding. Others provide that parental rights may be terminated when their child is adjudged to be neglected. About half the states also permit termination to occur as a separate proceeding, prior to adoption but sometime after the adjudication of a neglect petition. The standard endorses this third approach, because it provides an opportunity for counseling and other services as well as time to relieve the causes for the abuse or neglect. *Accord*, IJA/ABA, *Neglect, supra; Report of the Task Force, supra;* Areen, *supra*. It is anticipated that the issue of termination will arise at the review hearing held six months after disposition in cases in which a juvenile has been removed from the home. *See* Standard 3.1812. However, termination, at that time, should not be made mandatory. But see *Report of the Task Force, supra;* IJA/ABA, *Neglect, supra* at Standard 8.3; Areen, *supra*.

The standard would permit termination in cases of abandonment or abuse regardless of the parent's prior record or whether the juvenile has been in out-of-home placement. *See* Standard 3.113(a)-(b). However, in keeping with the policy of trying to protect and provide support for the child without removal set forth in Standard 3.184, termination in abuse cases in which there is no record of previous neglect or abuse, in which the juvenile has not been removed, or in which the juvenile's parents have not given their consent are expected to be exceedingly rare. *See* IJA/ABA, *Neglect, supra.* The provision on consent is drawn from the American Indian Law Center, *Model Children's Code,* Section 7.6(c)(4) (1976). Consent to termination of parental rights should only be accepted following a determination that the consenting individual is able to and does understand the nature and consequences of his/her action, and that the consent is not the result of any promise, inducement, force, bargain, or threat. *See* Standard 3.176.

The standard recommends further that even though the conditions listed in paragraphs (a)-(e) may be present, the court should not terminate parental rights if termination would be detrimental to the juvenile because a close parent-child relationship still exists; would be unnecessary in order to secure a stable family living arrangement for the juvenile or would not result in such a living arrangement; or if the juvenile objects. It should be noted that under Standards 3.132 and 3.133, both the juvenile and the juvenile's parents would be entitled to counsel at termination proceedings and that under Standard 3.169, a guardian *ad litem* may be appointed when very young children or children who are mentally ill or mentally retarded are involved, or when a child's interests require it.

Finally, in recognition that too often juveniles removed from their home have not been placed with a family on a permanent or long-term basis, and in recognition of the importance of stable interpersonal relationships to emotional development, *Goldstein et.al., supra* at 31-35; Areen, *supra* at 889, 914, the standard recommends that judicial oversight of the case not end until a permanent placement—preferably adoption—has been made. *Accord,* IJA/ABA, *Neglect, supra* at Standard 8.5. The review was set on an annual basis because of the six month acclimation period which many jurisdictions require before adoption can be finalized.

Related Standards

2.223	Criteria for Referral to Intake—Neglect and Abuse (Law Enforcement Agencies)
2.233	Criteria for Taking Juveniles Into Emergency Protective Custody (Law Enforcement Agencies)
2.322	Criteria for Referral to Intake—Neglect and Abuse (Nonlaw Enforcement Agencies)
2.33	Criteria for Taking Juveniles Into Emergency Protective Custody (Nonlaw Enforcement)
3.113	Jurisdiction Over Neglect and Abuse
3.171	Rights of the Parties
3.184	Dispositional Criteria and Alternatives—Neglect and Abuse
3.186	Predisposition Investigations
3.187	Predisposition Reports
3.188	Dispositional Hearing
3.1812	Review of Dispositional Orders—Neglect and Abuse
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse
3.191	Right to Appeal

3.186 Predisposition Investigations

Predisposition investigative services should be available to and utilized by family courts. Predisposition investigations should be conducted by the agency responsible for the provision of supervisory services to juveniles and should be governed by written guidelines and rules issued by that agency. Whenever possible, separate units should be established to conduct such investigations.

Predisposition investigations should not begin until the petition has been adjudicated, unless the informed written consent of the respondent has been obtained. In no circumstances should information obtained during the predisposition investigation be considered by the court prior to adjudication.

Predisposition investigations should be designed and conducted to obtain only that information essential to the making of dispositional decisions. They should be authorized to include examination of court records and the records of law enforcement and other public agencies; interviews with the victim, witnesses to the conduct on which the petition is based, the subject of the petition, his/her family, guardian, or primary caretaker, and school and social service agency personnel; and referral of the subject of the petition for a diagnostic physical or mental health examination. Before a person may be referred for a physical or mental health examination, there should be a hearing at which the need for such an examination has been established. Orders authorizing referral for a diagnostic examination should not require confinement or institutionalization unless nonconfining alternatives are unavailable or would be ineffective.

In requesting an interview with the subject of a petition or his/her family, and at its inception, the person conducting the predisposition investigation should explain the purpose of the interview, the uses of the information obtained, and the dispositional alternatives, and should advise interviewees that they may decline to participate in the interview and that they are entitled to be represented by counsel.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositional Procedures,* Standards 2.1-2.4, and *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standards 2.1-2.4, 3.1, and 3.4 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Dispositional Procedures,* and IJA/ABA, *Probation Function,* respectively].

Commentary

This standard encourages the use of predispositional investigations in delinquency, noncriminal misbehavior, and neglect and abuse proceedings, and outlines the timing and scope of such investigations and the procedural safeguards that should apply. Consistent with Standard 3.141, the standard does not specify whether the unit conducting predispositional investigations should be within the executive or judicial branch. The IJA/ABA, *Probation Function, supra,* and the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 21.1 (1976) [hereinafter cited as *Report of the Task Force*], recommend that predisposition investigations be performed by an executive agency rather than by probation officers working directly for the family court. *But see* R. Kobetz and B. Bosarge, *Juvenile Justice Administration,* 428-431 (1973). This is premised on the belief that the administrative burdens of overseeing the operations of an intake unit or probation and investigatory services are more appropriately lodged in the executive branch so that the resources of the family court can be concentrated on hearing, adjudicating, and determining the disposition of the cases submitted under its jurisdiction.

The recommendation that investigative services should be available to the family court is not intended to imply that an investigation must be performed when the family court judge already has substantial information concerning the respondent as a result of the adjudicatory hearing or a report prepared in conjunction with a recently concluded case. *See, e.g.,* IJA/ABA, *Probation Function, supra;* IJA/ABA, *Dispositional Procedures, supra;* and National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Act,* Section 28 (1969); *but see* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 30 (1975); National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Sections 5.14 and 16.10 (1973) [hereinafter cited as *Corrections*]; ABA, *Standards Relating to Sentencing Alternatives and Procedures,* Section 4.1 (approved draft, 1968).

Predispositional investigations should not be initiated until after the adjudication hearing without the informed written consent of the respondent, and under no circumstances should the information obtained through the predisposition investigation be presented to or considered by the judge prior to adjudication. *See, e.g.,* IJA/ABA, *Probation Function, supra;* IJA/ABA, *Dispositional Procedures, supra; Report of the*

Task Force, supra at Standard 14.7; *Corrections, supra,* Section 5.15; *Uniform Act, supra* at Section 28. Such reports may contain highly prejudicial information that although irrelevant to the determination of the truth of the allegations, may be extremely difficult for any judge to disregard during the adjudication hearing. It is anticipated that the most common situations in which consent will be given to begin a predisposition investigation before adjudication will be when the respondent intends to admit the allegations in the petition or when the respondent is in custody and wishes to minimize the time between adjudication and disposition.

For the reasons indicated in the Commentary to Standard 3.146, predisposition investigations are limited to the collection of information essential to the making of the dispositional decision. Although the scope of predisposition investigations is somewhat broader than that recommended for intake, the general principle that the accumulation of dispositional information, particularly of a subjective nature, does not necessarily improve decision making still applies. *See* Standard 1.52; *see also* IJA/ABA, *Dispositional Procedures, supra* at Standard 2.1(d); IJA/ABA, *Standards Relating to Juvenile Records and Information Systems,* Standard 3.1 (tentative draft, 1977); *Report of the Task Force, supra* at Standards 14.5 and 28.1.

The standard permits examination of court records, law enforcement records, school records, and the records of social service agencies, interviews with the complainant, the victim, witnesses, school and social service personnel, *see* Standards 1.531-1.534, as well as with the respondent and his/her family, guardian, or primary caretaker. In so doing, it attempts, like the other disposition standards, to strike a balance between the treatment and "just desserts" models and between the need for adequate dispositional information and the right to privacy of respondents and their families. Unlike the IJA/ABA Joint Commission provision, the standard does not encourage interviews with "individuals having knowledge of the juvenile." IJA/ABA, *Probation Function, supra* at Standard 2.4(a). Such a broad prescription would seem to sanction the wholesale neighborhood and school checks that the remainder of the provisions are intended to halt.

The standard provides for the observance of other procedural safeguards intended to guarantee that the predispositional investigation does not impinge upon the rights of the respondent or others. With regard to interviews with the respondent and his/her family, guardian, or primary caretaker, the standard requires that the interviewees be informed of the purposes of the interview, the possible outcome, that any statement may be used against them at the disposition hearing, and that they are entitled to be represented by counsel. See Standards 3.132, 3.133, and 3.146. The IJA/ABA Joint Commission and the Task Force provisions only apply such safeguards to the subject of the proceeding. IJA/ABA, *Dispositional Procedures, supra* at Standard 2.2(b); *Report of the Task Force, supra* at Standard 14.7. However, because Standards 3.112, 3.113, 3.132, and 3.133 recognize that dispositional proceedings may directly affect the families of persons subject to delinquency, noncriminal misbehavior, or neglect and abuse proceedings, as well as the respondents themselves, it appears appropriate to expand the scope of the protections. *See also* Standard 3.146.

Finally, the standard provides that a respondent, following adjudication, may be required to submit to a physical or mental health diagnostic examination after a hearing at which the need for such an examination has been clearly and convincingly proven. Such examinations should be on an out-patient basis except when out-patient facilities are not available or for some reason could not provide the type of examination that is necessary. The order should specify the nature and objectives of the proposed examination as well as the place where the examination should take place. It is intended that when confinement is required, it should be for as short a period as possible, and that in no event should it exceed thirty days. *See* IJA/ABA, *Dispositional Proceedings, supra* at 2.3(d); *Report of the Task Force, supra* at Standard 14.7.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Confidentiality of Records
1.531	Access to Police Records
1.532	Access to Court Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.534	Access to Child Abuse Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
3.132	Representation by Counsel—For the Juvenile
3.133	Representation by Counsel—For the Parents
3.141	Organization of Intake Units
3.146	Intake Investigations
3.181	Duration of Disposition and Type of Sanction—Delinquency
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.185	Criteria for Termination of Parental Rights
3.187	Predisposition Reports
3.188	Dispositional Hearings

3.187 Predisposition Reports

Predisposition reports in delinquency, noncriminal misbehavior, and neglect and abuse matters should contain only information that is essential to making dispositional decisions. Written rules and guidelines should be established to govern their preparation and dissemination.

The predisposition report should be divided into three sections. In delinquency proceedings, the first section should contain information concerning the nature and circumstances of the offense upon which the adjudication is based, the juvenile's role in that offense, the period, if any, for which the juvenile was detained pending adjudication and disposition, the juvenile's age, and the juvenile's record of prior contacts with the intake unit and the family court.

In noncriminal misbehavior and neglect and abuse proceedings, the first section of the predisposition report should contain information concerning the nature and circumstances of the conduct, neglect, or abuse upon which the adjudication was based, the prior contacts with the family court or intake unit which the person adjudicated and his/her family, guardian, or primary caretaker have had, the results of those contacts, and the age of the juvenile with regard to whom the petition was filed.

Section two of predisposition reports should contain only that information essential for selecting a particular dispositional program. Such information may include:

- **a. A summary of the home environment, family relationships, and background;**
- **b. A summary of the juvenile's educational and employment status;**
- **c. A summary of the interests and activities of the juvenile with regard to whom the petition was filed;**
- **d. A summary of the interests of the juvenile's parents, guardian, or primary caretaker; and**
- **e. A summary of the results and recommendations of any significant physical or mental health examinations.**

Section three should contain an evaluation of the foregoing information, a summary of the dispositional alternatives available, and a recommendation as to disposition.

Predisposition reports should be written, concise, factual, and objective. The sources of the information, the number of contacts made with such sources, and the total time expended on investigation and preparation should be clearly indicated.

The predisposition report and any diagnostic or mental health report should not constitute a public record. However, these reports should be made available to counsel for the state, for the juvenile, and for the parent, guardian, or primary caretaker sufficiently prior to any dispositional proceeding to allow for independent investigation, verification, and the development of rebuttal information. No dispositional decision should be made on the basis of a fact or opinion that has not been disclosed. Predisposition and diagnostic reports should also be made available to the public agency directed to take custody of or provide services to the juvenile.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositional Procedures,* Standards 2.3-2.4, and *Standards Relating to the Juvenile Probation Function: Intake and Predisposition Investigative Services,* Standard 2.4 (tentative drafts, 1977) [hereinafter cited as IJA/ABA, *Dispositional Procedures,* and IJA/ABA, *Probation Function,* respectively].

Commentary

The standard sets out the principles governing the content and distribution of predisposition reports. Like the standards on intake and predisposition investigations, it specifies that only information essential to the predispositional decision should be collected, summarized, and presented to the family court. *See* Standards 1.521, 3.146, and 3.186. Also like the previous standard and the provisions on intake, Standard 3.187 encourages the development or written rules and guidelines to implement this principle and to promote consistency. *The National Advisory Committee recommends the development of rules and guidelines governing the preparation and dissemination of predisposition reports as an action that each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.* Such rules should be developed jointly by the family court and the agencies or agency responsible for predispositional investigations.

The division between the objective and social history sections of the predisposition report for delinquency cases corresponds to the separation of the decision regarding the length of sanction/degree of restraint from that concerning the type of program proposed in Standard 3.182. It is intended to facilitate the court's ability to base its length of sanction/degree of restraint decision solely on offense-related factors, age, and prior record, thus promoting consistency and fairness. Although a similar separation is not recommended for dispositional decisions in noncriminal misbehavior and neglect and abuse cases, there appears to be no reason why the three-part report format should not be used in such cases as well. Nothing in the standard is intended to prohibit the inclusion of statements of the victim, if any, and witnesses regarding the nature and seriousness of the offense, conduct, neglect, or abuse on which the petition was based.

Section two of predisposition reports may include information about the home environment, family relationships, employment and educational status, and the interests and activities of the juvenile involved, the interests of the juvenile's parents, guardian, or primary caretaker, and any significant medical or mental health findings. Which of these types of information will be included in a particular report should depend on the nature of the case and the needs and characteristics of the respondent, but the standard makes clear that only social history information essential for the dispositional decision should be included. Information regarding the attitude of the juvenile is not included because of the difficulty of assessing, for example, "the difference between feigned and genuine resolve to mend one's ways or between genuine indifference to the law's commands and fear engendered defiance." President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime*, 17 (1967). *But see* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention* (1976). However, Standard 3.188 does recommend that the parties be allowed to address the court at the dispositional hearing.

The provision in the standard recommending that the source of information contained in the report be identified and that the number of contacts with such sources and the time expended in preparing the report be noted is intended to facilitate the correction of any inaccuracies in the predisposition report and assist the family court judge in weighing the information presented and assessing the performance of the probation agency investigative staff. To further assure that dispositional decisions are not based upon misleading or unreliable information, the standard recommends disclosure of the report and any other information presented to the court orally or in written form, to counsel for the state, the juvenile, and the parents. Such disclosure is essential to assure the fairness and accuracy of the process. *See* ABA, *Standards Relating to Sentencing Alternatives and Procedures*, Section 4.4 (approved draft, 1968). As was stated by Justice Fortas in *Kent v. United States*, 383 U.S. 541, 563 (1966):

> . . . [I]f the staff's submissions include materials which are susceptible to challenge or impeachment, it is precisely the role of counsel to "denigrate" such matter. There is no irrebuttable presumption of accuracy attached to staff reports . . . [I]t is equally of "critical importance" that the material submitted to the judge . . . be subjected, within reasonable limits having regard to the theory of the *Juvenile Court Act*, to examination, criticism and refutation.

The scope of disclosure suggested in Standard 3.187 is somewhat broader than that proposed in the IJA/ABA Joint Commission and Task Force provisions in that disclosure to counsel for the parents is made explicit because of the direct interest of parents in dispositional hearings. *See* Standard 3.133. Disclosure is not made directly to the parties when an attorney is present to allow some discretion in disclosing particularly sensitive information to an individual without jeopardizing his/her interests. However, the principles of client autonomy recommended in Standard 3.134 still apply. The 1968 ABA sentencing standards allow the limited excision of presentence reports by the court in "extraordinary cases." ABA, *supra* at Section 4.4.

Notwithstanding the broad recommendations for disclosure to the parties, the information contained in the predisposition report investigation should not constitute a public record. Much of the social history information is of a highly personal nature. Public release of such information or of diagnostic reports may have a detrimental impact on the respondent and his/her family. Similarly, the report is to be given to the public supervisory agency rather than directly to the private or public program to which the juvenile or family will be directed. The agency should release to the program only that information essential to the delivery of the specific services to be offered. *See* Standard 1.533.

Related Standards

1.53	Confidentiality of Records
1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.54	Completeness of Records
1.55	Accuracy of Records
1.56	Destruction of Records
3.132	Representation by Counsel—For the Juvenile
3.133	Representation by Counsel—For the Parents
3.143	Criteria for the Intake Decisions—Delinquency
3.144	Criteria for Intake Decisions—Noncriminal Misbehavior
3.145	Criteria for Intake Decisions—Neglect and Abuse
3.146	Intake Investigations
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.186	Predisposition
3.188	Dispositional Hearing
4.214	Training School—Development of a Treatment Plan
4.223	Camps and Ranches—Services
4.233	Group Homes—Services
4.32	Community Supervision—Services
4.410	Right to Care and Treatment

3.188 Dispositional Hearings

A person adjudicated under the delinquency, noncriminal misbehavior, or neglect and abuse jurisdiction of the family court should be entitled to a dispositional hearing, separate and apart from the adjudicatory hearing. At that hearing, the attorney for the state, the juvenile, and the juvenile's parents, guardian, or primary caretaker should be afforded an opportunity to present evidence in the form of documents and witnesses concerning the appropriate disposition; to examine and controvert any written evidence; and to cross-examine any witnesses. In addition, the parties and their counsel should be afforded an opportunity to address the court.

The parties should also be entitled to compulsory process for the appearance of any persons, including character witnesses, and persons who have prepared any report to be utilized at the hearing.

The court may rely on evidence, to the extent of its probative value, that is relevant and material to the objectives of the hearings and was not obtained in violation of the adjudicated person's constitutional rights, even though such evidence would not have been admissible at an adjudicatory hearing.

When more than one juvenile is adjudicated for committing a particular act of delinquency, each should have a dispositional hearing separate and apart from those of the correspondents unless they are members of the same family.

The dispositional decision should be made in accordance with the criteria and procedures set forth in standards 3.182-3.184. The family court judge should explain the terms of the disposition to the respondent and should state, on the record, the facts and reasons underlying the dispositional decision.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositional Procedures,* Standards 6.2-6.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Dispositional Procedures*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 14.7 and 14.8 (1976) [hereinafter cited as *Report of the Task Force*]; National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Section 5.17(2)(b) (1973) [hereinafter cited as *Corrections*].

Commentary

This standard sets out the procedures and rights that should apply to dispositional hearings. The commentary to the ABA, *Standards Relating to Sentencing Alternatives and Procedures,* Section 5.4 (approved draft, 1968) outlines a threefold purpose for such hearings:

> [T]o inform the court as an aid to the exercise of its sentencing discretion, to give the parties an opportunity to assure both that the court's information is accurate and that factors which they think relevant to the sentencing decision will come to its attention, and to allow for the imposition of sentence in an atmosphere which, while it may not affirmatively contribute to the rehabilitation of the offender, will at least not give him further cause to leave the sentencing stage with a sour attitude.

Accordingly, the standard recommends *inter alia* that all parties have an opportunity to present evidence and be heard, that all parties have the assistance of counsel, and that the terms of and reason for the dispositional decision should be explained.

Specifically, the standard endorses bifurcation of adjudicatory and dispositional hearing. The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime,* 35 (1967) suggests the following benefits of separate adjudicatory and sentencing hearings:

> It makes possible a controlled and relatively narrowly focused inquiry into the facts of the alleged conduct at adjudication and a more general and searching inquiry into factors bearing upon need for supervision at disposition, thus reducing the danger that the limitations of the adjudicatory hearing will unduly narrow the dispositional determination and that the demands of information appropriate to the dispositional hearing will unduly enlarge the scope of the adjudicatory hearing.

Both the IJA/ABA Joint Commission and the *Report of the Task Force, supra* approve the concept of a bifurcated hearing, although the Task Force provision indicates that the disposition hearing may be held "immediately after the adjudication hearing." *Report of the Task Force, supra* at Standard 14.7; *see also* M. G. Paulson and C. H. Whitebread, *Juvenile Law and Procedures,* 167 (National Council of Juvenile Court Judges, 1974). Under Standard 3.161, dispositional hearings should be held within fifteen days of adjudication. No minimum time is specified, although the parties should have prior notice and sufficient time to review the predisposition report and prepare for the hearing. *See* Standards 3.186 and 3.187.

The standard provides that at the hearing, all parties should be entitled to subpoena, question, cross-examine witnesses, and present documentary evidence. It is anticipated that most of this evidence and testimony will be directed to defining the needs, desires, and opportunities available to adjudicated individuals and, in delinquency, noncriminal misbehavior, and neglect and abuse cases, to their families. Among the witnesses who may be called are individuals who prepared or provided information for predispositional and diagnostic reports. This is in accordance with the IJA/ABA, *Dispositional Procedures, supra,* and *Report of the Task Force, supra* provisions and is intended to permit examination of how the information contained in the report was obtained and the basis of the conclusions therein. *See also* National Conference of Commissioners on Uniform State Laws, *Uniform Juvenile Court Act,* Section 29(d) (1968).

All relevant and material evidence, including hearsay, may be considered in making the dispositional decision, except for evidence gathered in violation of the respondent's constitutional rights. *See, e.g.,* Standard 2.247. Although, as indicated by the provisions recommending that the parties should be entitled to call and cross-examine witnesses, direct testimony is preferred, all the evidentiary rules required to assure a fair hearing on the merits need not apply in dispositional proceedings as long as there are adequate indicia that the evidence is trustworthy. The exception endorses the position adopted by the 1973 National Advisory Committee on Criminal Justice Standards and Goals and is premised on the belief that "the integrity of the judiciary is compromised when it bases its decision on materials found in violation of the constitution." *Corrections, supra* at 192.

The recommendation that the judge explain the terms of the disposition and the facts and reasons on which the disposition is based follows the policy throughout these standards of requiring decision makers to provide an explanation of the basis for discretionary decisions. *See* Standards 2.242-2.245, 2.342-2.345, 3.147, 3.155-3.157, 3.2, and 4.54; *see also Corrections, supra;* ABA, *Standards Relating to Sentencing Procedures and Alternatives, supra;* as well as the standards adopted by the IJA/ABA, *Dispositional Procedures, supra,* and the *Report of the Task Force, supra.* It is anticipated that articulation of the reasons underlying the choice of disposition will not only avoid misunderstandings of the terms imposed, but also will help to improve dispositional decision making through the development of written dispositional and correctional policy and by providing a basis for appellate review. To assist the respondent in understanding the disposition imposed, the judge should indicate the more severe and less severe alternatives, if any, that were rejected.

Related Standards

3.131 Representation by Counsel—For the State
3.132 Representation by Counsel—For the Juvenile
3.133 Representation by Counsel—For the Parents
3.134 Role of Counsel
3.171 Rights of the Parties
3.172 Public and Closed Proceedings
3.173 Finder of Fact
3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184 Dispositional Alternatives and Criteria—Neglect and Abuse
3.186 Predisposition Investigation
3.187 Predisposition Report
3.189 Review and Modification of Dispositional Decisions
3.1810 Enforcement of Dispositional Orders—Delinquency
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812 Review of Dispositional Orders—Neglect and Abuse
3.1813 Enforcement of Dispositional Orders—Neglect and Abuse
3.191 Right to Appeal

3.189 Review and Modification of Dispositional Decisions

At any time during the dispositional period, a juvenile, his/her parents or guardian, or an individual or agency in whose care or custody a juvenile has been placed should be entitled to apply to the family court to reduce the duration of the disposition or the degree of restraint imposed, on the grounds that it:

- **a. Exceeds the statutory maximum;**
- **b. Was imposed in an illegal manner;**
- **c. Is inequitable in light of the prescribed dispositional criteria or the dispositions imposed by judges in the same or other family courts for similar conduct; or**
- **d. That because of changed circumstances at the time of the application, a reduction in duration or degree of restraint would prevent an unduly harsh or inequitable result.**

In addition, the court should have the authority to reduce the duration of a disposition or degree of restraint on its own initiative for any of the above-listed reasons, to reduce the degree of restraint, when it appears that access to required services is not being provided, and to terminate the disposition when the required services cannot be provided under less restrictive conditions.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 14.21 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions Procedures,* Standards 41(d)(i), and 51(a) and (b) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Dispositions*].

Commentary

This standard suggests a mechanism through which delinquency, noncriminal misbehavior, and neglect and abuse dispositions that are illegally or improperly imposed or unduly harsh in light of the dispositional criteria set forth in Standards 3.182, 3.183, and 3.184, the dispositional decisions of other judges in similar cases, the lack of required services, or changed circumstances, may be corrected or modified. The standard is intended to cover only reductions in the length of the disposition or the degree of restraint imposed so as not to deter respondents and their families from exercising their rights. Standards 3.1810, 3.1811, and 3.1813 provide for increasing the length or restrictiveness of dispositions following a willful violation of the terms of a dispositional order, and Standards 4.71-4.73 provide for transfers among facilities with differing levels of security or operated by different government agencies. Appellate review of dispositional decisions is discussed in Standard 3.191.

Although a number of groups have recommended disposition or sentence review procedures, the scope and purpose of such reviews vary widely. The most restrictive of these procedures permit review of the legality of the imposition procedure only. *See, e.g.,* National Conference of Commissioners on Uniform State Laws, *Uniform Rules of Criminal Procedure,* Sections 631, 632 (1974). Others place more emphasis on review of the action of the supervising agency or the continued appropriateness of the dispositional plan. *See, e.g.,* U.S. Dept. of Health, Education and Welfare, *Model Act for Family Courts,* Sections 37(a)(3) and 38(a)(1) (1975); L. Arthur and W. Gauger, *Disposition Hearings: Heartbeat of the Juvenile Court,* 69 (National Council of Juvenile Court Judges, 1974). The ABA, *Standards Relating to Sentencing Alternatives and Procedures,* Section 6.1 (approved draft, 1968) recommends that courts have the power to reduce and modify sentences "if new factors bearing on the sentence are made known," and the National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Section 5.11 (1973) recommends appellate review of sentences to assure that the sentence is consistent with statutory criteria and with sentences imposed in similar cases and to determine whether the sentence is otherwise excessive or imposed in the prescribed manner. *See also* Wisconsin Council on Criminal Justice, Special Study Commission on Criminal Justice Standards and Goals, *Juvenile Justice Standards and Goals,* Section 14.1(k) (1975) (automatic review of delinquency dispositions every six months and on request of the juvenile).

Standard 3.189, following the recommendations of the IJA/ABA Joint Commission and the Standards and Goals Task Force, incorporates many of the features of these other proposals. However, unlike other provisions, the standard is intended to apply to noncriminal misbehavior and neglect and abuse proceedings as well as delinquency cases. The authority to modify dispositions is placed in the family court rather than in correctional or treatment agencies in order to increase the visibility and accountability of dispositional decision making.

Reviews may be initiated by the juvenile, the juvenile's parent or guardian, the person or agency serving as the primary caretaker or supervisor of the juvenile, and by the court itself. The suggested grounds for review are designed to encourage utilization of the dispositional criteria and to assure that the respondent and/or family have been offered the types of programs and services identified in the dispositional order. The standard specifies that if the ordered programs or services cannot be made available at the specified level of restraint or at a lesser level of restraint, the court may terminate the disposition. This provision is intended to stimulate the provision of a wide range of vocational, educational, medical, psychiatric, and other services in the community, as well as institutions, to reduce the incentive to remove juveniles from their homes or to place them in more secure facilities than necessary because there are no other means for providing the services they need or desire. *See Report of the Task Force, supra;* IJA/ABA, *Dispositions, supra.*

Related Standards

3.155	Initial Review of Detention Decisions
3.156	Review of Conditions of Release
3.157	Initial Review of Emergency Custody Decisions
3.158	Review Modification and Appeal of Detention Decisions
3.163	Decision to File a Petition
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.188	Dispositional Hearings
3.1810	Enforcement of Dispositional Orders—Delinquency
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812	Review of Dispositional Orders—Neglect and Abuse
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse
4.410	Right to Care and Treatment
4.71	Transfers From Less Secure to More Secure Facilities
4.72	Transfers From More Secure to Less Secure Facilities
4.73	Transfers Among Agencies

3.1810 Enforcement of Dispositional Orders—Delinquency

The agency responsible for the supervision, care, and custody of a juvenile who has been adjudicated delinquent should be authorized to apply to the family court if it appears that a juvenile has willfully failed to comply with any part of the dispositional order. A copy of the application should be provided to the juvenile, the juvenile's attorney and parent, guardian, or primary caretaker, and the family court section of the prosecutor's office.

No more than five days after the application has been filed, unless an extension has been granted under Standard 3.162, a hearing should be held to determine whether the terms of the dispositional order have been violated and, if so, whether there are any circumstances justifying the violation. At the beginning of the hearing, the juvenile should be asked to admit or deny the allegations. The procedures set forth in Standard 3.176 should be utilized in accepting any admission. If the allegations are denied, the state should be required to prove willful noncompliance with the terms of the dispositional order by a preponderance of the evidence. Each part should be afforded an opportunity to present evidence and cross-examine witnesses and should be entitled to compulsory process.

If it is determined that the juvenile has not complied with the dispositional order and that the violation is not justified, the court should be authorized:

a. To warn the juvenile of the consequences of continued noncompliance and order the juvenile to make up any time missed from an educational, vocational, treatment, community service, or other program specified in the dispositional order or make any missed payments if a fine or restitution has been imposed;

b. Modify existing conditions or impose additional conditions calculated to induce compliance if it appears that a warning will be insufficient; or

c. Impose the next most severe type of sanction if it appears that there are no permissible conditions reasonably calculated to induce compliance.

The court should be authorized to add time missed from any program specified in the dispositional order to the length of the disposition, as long as the total dispositional period does not exceed the statutory maximum.

The terms of the modified dispositional order should be explained in the manner set forth in Standard 3.188. A verbatim record should be made of all enforcement proceedings, and the rights to counsel afforded for dispositional proceedings in Standards 3.132 and 3.133 should apply.

When the conduct alleged to constitute a willful failure to comply with the dispositional order also constitutes a delinquent offense, a complaint rather than an enforcement application should be filed and the matter referred to intake.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions,* Standard 5.1(d) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Dispositions*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 14.22 (1976) [hereinafter cited as *Report of the Task Force*]; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Section 5.4 (1973) [hereinafter cited as *Corrections*].

Commentary

The standard follows closely the positions adopted by the IJA/ABA, *Dispositions, supra,* and the *Report of the Task Force, supra.* It recommends the procedures to be followed when there are substantial violations of the terms of a dispositional order imposed after an adjudication for delinquency. It is anticipated that this procedure will ordinarily be employed when a juvenile is under a community supervision rather than in a residential correctional program. *See* Standard 4.33; *see also* Standards 4.51-4.54, and 4.71-4.72. In conformity with the IJA/ABA Joint Commission and Task Force provisions, it is intended that when participation in any type of remedial, educational, vocational, treatment, service, or other program is prescribed, compliance should be defined in terms of attendance and not in terms of performance.

Neither the *Report of the Task Force, supra,* nor the IJA/ABA, *Dispositions, supra* discusses the hearing procedures or the rights to be accorded the juvenile. *But see Corrections, supra.* In adult probation revocation hearings, the Supreme Court has held that although revocation proceedings are not the equivalent of a criminal trial, probationers are entitled to notice, to disclosure of the evidence against them, to present evidence and witnesses on their own behalf, to cross-examine witnesses called by the state, to a "neutral and detached" hearing body, to a statement of the findings, and to counsel when necessary to effectuate the other rights. *Gagnon v. Scarpelli,* 411 U.S. 790 (1973). Accordingly, the standard requires that a copy of the enforcement application be delivered to the juvenile, his/her attorney, and parent, guardian, or primary caretaker as well as to the attorney for the state. The provision of counsel to juveniles and their parents and the inclusion of the prosecutor in such proceedings, although not required under *Gagnon,* follows the reasoning that underlies Standards 3.131-3.134. The standard also provides for the presentation and cross-examination of witnesses by all parties, an explanation of the terms of and reasons for modifications in the dispositional order, and a transcript of the proceedings. Consistent with Standards 3.171 and 3.188, the standard also provides for compulsory process. Because of the less formal nature of the proceeding, the level of proof is set at a preponderance of the evidence rather than beyond a reasonable doubt. *But see Corrections, supra* (substantial evidence); U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 39 (1975) (clear and convincing proof). This provision, like Standard 3.174, does not specify the rules of evidence to be applied. Under *Gagnon,* revocation decisions may be based, in part, on hearsay.

Upon determining that a violation has occurred and that there is no good excuse for noncompliance, the standard recommends three enforcement alternatives. As with the original dispositional decision, the choice of sanction is structured to emphasize that the least restrictive alternative likely to induce compliance should be utilized.

The first alternative is simply to warn the juvenile of the consequences of further noncompliance and order him/her to make up any time or payments missed. Such a procedures has been recommended by the ABA, *Standards Relating to Probation,* Section 5.1 (approved draft, 1970) as well as the IJA/ABA, *Dispositions, supra;* the *Report of the Task Force, supra;* and *Corrections, supra.*

If the family court judge concludes that a warning would be unlike to induce compliance, the next option is to modify or add to the conditions already imposed. Such modifications should be designed to encourage compliance. Hence, it would ordinarily be inappropriate to order a juvenile to attend a vocational training program, for example, because of failure to report to his/her counselor each week.

Finally, if neither a warning nor modification of conditions appears sufficient to gain compliance, the judge may impose the next most restrictive form of sanctions. The standard would permit, but not require, the amount of time missed from the dispositional program, time to be added to the disposition, but unlike the source provisions, it makes explicit that the statutory maxima should still apply. *See* Standard 3.181.

Finally, to provide the juvenile with all the procedural protections that are applicable when there are allegations of delinquent conduct, including the requirement of proof beyond a reasonable doubt, *see* Standards 3.171 and 3.174, and to make the imposition of limits on the length of dispositions more practicable, the standard recommends that when the alleged violations of the dispositional order constitute a delinquent offense, the matter should be handled as a new delinquency proceeding rather than as an enforcement action. IJA/ABA, *Dispositions, supra; Report of the Task Force, supra.*

Related Standards

3.111	Jurisdiction Over Delinquency
3.171	Rights of the Parties
3.176	Uncontested Adjudications
3.177	Withdrawal of Admissions
3.181	Durations of Disposition and Type of Sanction—Delinquency
3.182	Criteria for Dispositional Decisions—Delinquency
3.188	Dispositional Hearings
3.189	Review and Modification of Dispositional Decisions
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse
4.33	Community Supervision—Imposition and Enforcement of Regulations
4.54	Disciplinary Procedures
4.71	Transfers From Less Secure to More Secure Facilities
4.72	Transfers From More Secure to Less Secure Facilities

3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior

Any of the parties to the dispositional hearing following adjudication of a noncriminal misbehavior petition should be authorized to apply to the family court if it appears that there has been a willful violation of any part of the dispositional order. A copy of the application should be served on each of the other parties and sent to their attorneys.

No more than five days after the application has been filed, unless an extension has been granted under Standard 3.162, a hearing should be held to determine whether the terms of the dispositional order have been violated and, if so, whether there are any circumstances justifying the violation. The court should follow the procedures and the parties should be afforded the rights set forth in Standard 3.1810 for enforcement hearings in delinquency cases.

If it is determined that a violation has occurred and that the violation is not justified, the court should be authorized:

a. To warn of the consequences of continued noncompliance and order that time missed from any program specified in the dispositional order be made up; or

b. Modify existing conditions or impose additional conditions calculated to induce compliance, if it appears that a warning will be insufficient.

The court should be authorized to add time missed from any program specified in the dispositional order to the length of the disposition, so long as the total dispositional period does not exceed the time limits set forth in Standard 3.183.

A verbatim record should be made of all enforcement proceedings.

When the conduct alleged to constitute a willful failure to comply with the dispositional order also meets the definition of noncriminal misbehavior set forth in Standard 3.112, a complaint rather than an enforcement application should be filed and the matter referred to intake.

Sources:

None of the standards or reports reviewed address the criteria and alternatives that should apply to enforcement of dispositional orders in noncriminal misbehavior proceedings. The procedures are based on those recommended for delinquency proceedings by: Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions,* Standard 5.1(d) (tentative draft, 1977); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 14.22 (1976); *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Section 5.4 (1973).

Commentary

With two exceptions, this standard parallels the provisions for enforcement of dispositional orders in delinquency cases. Like Standard 3.1810, it provides for notice of the alleged violation; a prompt hearing at which the violation must be proven by at least a preponderance of the evidence; the rights of the juvenile and the juvenile's parents, guardian, or primary caretaker to counsel, to compulsory process, and to present and cross-examine witnesses; for imposition of the least restrictive alternative likely to induce compliance; and for an explanation of the terms of and reasons underlying any modifications of the dispositional order. *See* Standards 3.132, 3.133, 3.171, and 3.188. It also recommends that modification of the dispositional order should be designed to induce compliance with those portions of the order that were violated, and that new instances of noncriminal misbehavior be handled through a complaint rather than through an enforcement proceeding. Filing a new complaint would allow continuation of dispositions beyond the limits proposed in Standard 3.183, but only after an adjudication proceeding at which the rights of the juvenile should be fully protected.

However, in keeping with the tripartite nature of dispositional proceedings in noncriminal misbehavior cases, *see* Standard 3.183, any of the parties, not just the state, may bring an enforcement action to gain compliance with the dispositional order by either of the other parties. Hence, if a juvenile fails to attend any program specified in the order, either the juvenile's parents or the state may apply to the court; if the parents fail to attend the counseling sessions required by the court, either the juvenile or the state may seek to enforce the order; and, if the public agency charged with providing a service to the juvenile or family fails to do so, either of the private parties may seek relief. It is anticipated that in an instance in which the state fails to comply, the modification procedure outlined in Standard 3.189 will be preferred. The family court's contempt powers are intended to be the primary means for enforcing orders directed at public agencies when the warning procedure set forth in paragraph (a) appears unlike to gain compliance.

The second distinction between this standard and Standard 3.1810 is the recommendation that imposition of the next most severe type of sanction not be available as a means of enforcing a dispositional order. *Cf.* Standard 3.1813. This follows from the recommendation in Standard 3.183 that in noncriminal misbehavior cases, dispositional orders and their enforcement should never result in the confinement of a juvenile in a secure detention or correctional facility or institution.

A more detailed explanation of the procedures and criteria applicable in enforcement proceedings is contained in the Commentary to Standard 3.1810.

Related Standards

3.112	Jurisdiction Over Noncriminal Misbehavior
3.171	Rights of the Parties
3.176	Noncontested Adjudications
3.177	Withdrawal of Admissions
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.188	Dispositional Hearings
3.189	Review and Modification of Dispositional Orders
3.1810	Enforcement of Dispositional Orders—Delinquency
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse
4.33	Community Supervision—Imposition and Enforcement of Regulations
4.54	Disciplinary Procedures

3.1812 Review of Dispositional Orders—Neglect and Abuse

In addition to the right to review provided by Standard 3.189, a hearing to review the dispositional decision in neglect and abuse cases should be held at least every six months to determine whether continued exercise of the family court's dispositional authority is necessary

Prior to the hearing, the agency responsible for the protection, care, or custody of the juvenile should submit to the court a report on the services offered to the family; the response to those services; the prognosis for cessation of intervention; and a recommendation regarding the appropriate disposition. A copy of the report should be provided to the attorney for the juvenile, the attorney for the juvenile's parents, guardian, or primary caretaker, and to the family court section of the prosecutor's office.

At the hearing, each of the parties should be afforded the opportunity to present evidence and to call and cross-examine witnesses and should be entitled to compulsory process. A verbatim record should be made of all review proceedings

A juvenile in an out-of-home placement should be returned home if the preponderance of the evidence indicates that return will not subject the juvenile to any of the dangers listed in Standard 3.113. Supervision and any necessary services should continue for at least six months following return of a juvenile to his/her home.

At the conclusion of the hearing, the family court judge should explain, on the record, any changes determined necessary and the facts and reasons underlying the decision.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Neglect and Abuse,* Standards 7.4(a) and 7.5(b) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Neglect*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 14.30-14.31 (1976) [hereinafter cited as the *Report of the Task Force*].

Commentary

This standard provides for automatic review of dispositions in neglect and abuse cases. As noted in the commentary to the provision adopted by the *Report of the Task Force, supra:*

> Under present practice, the purpose of providing services to the family or removing the child from the home on a "temporary" basis is to facilitate the safe reunion of parents and child. But more often than not this objective is thwarted. In establishing and executing plans to return the child, agency performance is woefully inadequate in many cases. In addition, some parents either effectively abandon the child or fail to make reasonable efforts to reunite the family. As a result children are often "lost" in the foster care system—remaining "in limbo" without a stable placement for periods of many years.

The judicial oversight provided by this standard, and the procedures recommended in Standard 3.189—modification of dispositional decisions at the request of a party—Standard 3.1813—enforcement of dispositional orders—and Standard 3.185—criteria for termination of parental rights—are intended to assure that neglected or abused juveniles receive the protection they need; that families of such juveniles receive the services they need; that such services continue for as long as necessary, but no longer; and that every effort is made to reunite families when a child has been removed from his/her home. The six-month time limit is intended to be a maximum. It does not represent the recommended minimum duration for dispositional orders in neglect and abuse cases.

The standard provides for a report by the agency responsible for carrying out the dispositional orders indicating what has been done to protect the child; to alleviate any harm suffered; and to assist the family to overcome the problems that led to the neglect or abuse. *See* Standard 3.184. Like the standards on detention, pre-adjudication procedures, and predisposition reports, Standard 3.1812 recommends that the agency report be disclosed to counsel for the parties to assure its accuracy and to allow them to prepare for the hearing. *See* Standards 3.155-3.157, 3.167, and 3.187. Disclosure of the report should be sufficiently before the hearing to allow such preparation to occur. As in other hearings provided for throughout these standards, all parties should have the means and opportunity to present evidence and witnesses, and to cross-examine the witnesses called by other parties. *See, e.g.,* Standards 3.171, 3.188, 3.1810, 3.1811, and 3.1813. Under Standards 3.132 and 3.133, both the juvenile and the juvenile's parents should be entitled to counsel.

The standard uses the same test for returning a juvenile to his/her home as is recommended for removal—i.e., whether the child can be protected from further neglect or abuse by some measure short of removal. The lower level of proof required for return provides an incentive for supplying help to the juvenile's parents, guardian, or primary caretaker to permit the child's safe return. The six months of continued services and supervision following return is to provide assistance and protection during the difficult transition period. *See* IJA/ABA, *Neglect, supra.*

The explanation called for in the final paragraph is part of the effort in these standards to make discretionary decisions more accountable and consistent. *See, e.g.,* Standards 3.147, 3.155-3.157, and 3.188. It is intended to help the parties understand their responsibilities as well as provide a basis for review.

Related Standards

3.113	Jurisdiction Over Neglect and Abuse
3.158	Review Modification and Appeal of Detention Decisions
3.171	Rights of the Parties
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.185	Criteria for Termination of Parental Rights
3.187	Predispositional Reports
3.188	Dispositional Hearings
3.189	Review and Modification of Dispositional Orders
3.1813	Enforcement of Dispositional Orders
4.25-4.252	Foster Homes
4.31-4.33	Community Supervision
4.410	Right to Care and Treatment

3.1813 Enforcement of Dispositional Orders—Neglect and Abuse

Any of the parties to the dispositional hearing following adjudication of a neglect and abuse petition should be authorized to apply to the family court if it appears that there has been a willful failure to comply with any part of the dispositional order. A copy of the application should be served on each of the other parties and sent to their attorneys.

No more than five days after the application has been filed, unless an extension has been granted under Standard 3.162, a hearing should be held to determine whether the terms of the dispositional order have been violated and, if so, whether there are any circumstances justifying the violation. The court should follow the procedures and the parties should be afforded the rights set forth in Standard 3.1810 for enforcement hearings in delinquency cases.

If it is determined that the dispositional order was violated and the violation was not justified, the court should be authorized:

a. To warn of the consequences of continued noncompliance and order that time missed from any program specified in dispositional orders be made up; and

b. To modify existing conditions or impose measures calculated to induce compliance, if it appears that a warning will be sufficient.

A verbatim record should be made of all enforcement proceedings.

Sources:

None of the standards or reports reviewed address the criteria and alternatives that should apply to enforcement of dispositional orders in neglect and abuse proceedings. The procedures are based on those recommended for delinquency proceedings by: Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions*, Standard 5.1(d) (tentative draft, 1977); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 14.22 (1976); *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections*, Section 5.4 (1973).

Commentary

This standard sets forth the procedures and alternatives available for enforcement of dispositional orders in neglect and abuse cases. As in the provision on enforcement in noncriminal misbehavior matters, the juvenile, the parent, or the state may initiate the enforcement action, and the family court's contempt powers are intended to serve as a prime means for securing compliance when a public agency fails to provide services ordered by the family court. *See* Standard 3.1811 and Commentary; *see also* Standards 3.189 and 3.1812. Like Standard 3.1810, it provides for notice of the alleged violation; for a hearing at which the violation must be proven by a preponderance of the evidence; for the rights of the juvenile and the juvenile's parents, guardian, or primary caretaker to counsel, to compulsory process, to present evidence and cross-examine witnesses; for imposition of the least intrusive alternative likely to induce compliance; and for an explanation of the terms of and reasons for any modification of the dispositional order. *See* Standards 3.132, 3.133, 3.171, and 3.188. It also recommends that modifications should be designed to induce compliance with the dispositional order and reduce the potential for harm to the child.

The term "measures to induce compliance" is intended to include removal of a child from his/her home for foster care placement when the criteria for removal set forth in Standard 3.184 are met. *See* Standard 3.1810; *but see* Standard 3.1811.

The standard does not recommend that a new complaint be filed when the conduct constituting the alleged violation also constitutes a new instance of abuse of neglect. Such a provision is unnecessary because of the lack of time limits on dispositional orders in neglect and abuse cases and the higher level of proof required for removal under Standard 3.184(b). *But cf.* Standards 3.1810 and 3.1811.

Related Standards

2.13	Intervention to Protect Against Harm
2.233	Criteria for Taking a Juvenile Into Emergency Protective Custody (Law Enforcement Agencies)
2.33	Criteria for Taking a Juvenile Into Emergency Protective Custody (Nonlaw Enforcement Agencies)
3.113	Jurisdiction Over Neglect and Abuse
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.171	Rights of the Parties

3.176	Uncontested Adjudications
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.185	Criteria for Termination of Parental Rights
3.188	Dispositional Hearings
3.189	Review and Modification of Dispositional Orders
3.1810	Enforcement of Dispositional Orders—Delinquency
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812	Review of Dispositional Orders—Neglect and Abuse
4.25-4.252	Foster Homes
4.33	Imposition and Enforcement of Regulations
4.410	Right to Care and Treatment

3.19 Appellate Procedures

3.191 Right to Appeal

The respondent in a delinquency, noncriminal misbehavior, or neglect and abuse proceeding should be entitled to appeal to the appropriate appellate court to review the family court's adjudication or dispositional order. Respondents should also be entitled to appeal interlocutory orders that impose significant restraints on their liberty. Appeals of other interlocutory orders should be permitted by leave of the appropriate appellate court.

The state should be entitled to appeal the adjudication or dispositional order in neglect and abuse proceedings and the following types of orders in delinquency and noncriminal misbehavior cases:

- **a. Orders that declare a statute unconstitutional;**
- **b. Orders that dismiss a case on such grounds as double jeopardy, failure to comply with the time limits specified in Standard 3.161, or failure of the petition to state a cause of action under the applicable statute;**
- **c. Orders that by suppressing state evidence are likely to result in dismissal of the case; or**
- **d. Orders that deny transfer of the case to a court of general jurisdiction.**

Other parties should be entitled to appeal dispositional orders that materially affect their liberty or interests.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Appeals,* Standards 1.2(a), 2.2, and 2.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Appeals*].

Commentary

This standard outlines the right to appeal afforded in delinquency, noncriminal misbehavior, and neglect and abuse proceedings. In general, it recognizes the principle adopted in the IJA/ABA, *Appeals, supra* at Standard 1.2(a) that:

> In order to recognize the goals of the entire juvenile justice system, it is essential that there be one appeal of right afforded to all parties materially affected by a juvenile court order, to review the facts found, the law applied, and the disposition ordered.

It is contemplated that appeals from family court proceedings will be of the same nature and directed to the same court as appeals from other divisions of the highest court of general jurisdiction and that they will be beased on the evidence adduced in the family court rather than constituting trials *de novo.*

Although the right to appeal in criminal or juvenile proceedings has never been formally held to be guaranteed by the Constitution, it has been statutorily afforded to adult criminal defendants in every state and to juveniles adjudicated delinquent in an overwhelming majority of jurisdictions. However, as the President's Commission on Law Enforcement and Administration of Justice observed, "by and large the juvenile court system has operated without appellate surveillance," and "the quality of justice in the juvenile court system has thereby been adversely affected in several ways." *Task Force Report: Juvenile Delinquency and Youth Crime,* 40 (1967).

The standard recommends that respondents have the right to appeal both the adjudication and the dispositional order.

> Review in either case aims toward the development of a greater uniformity of practices within the jurisdiction; development of a consistent rationale behind dispositional or adjudicatory decisions; and rectification of error made in individual situations. IJA/ABA, *Appeals supra* at Commentary to Standard 1.2.)

It is anticipated, however, that the modification procedures set forth in Standard 3.189 will be the usual review mechanism for dispositional orders. The commentary to that standard contains a discussion of the criteria for review of such orders.

The standard follows the IJA/ABA Joint Commission recommendations by providing for interlocutory appeals—i.e., appeals of pre-adjudication orders—by respondents. It recommends that respondents should be entitled to appeal detention orders or other orders significantly restricting their liberty—e.g., commitment to a mental health facility or transfer of the case to another division of the highest court of general jurisdiction—but that review of other orders—e.g., denial of a suppression motion—prior to disposition should be left to the discretion of the appropriate appellate court. the IJA/ABA, *Appeals, supra* does not define this authority other than to permit the appellate court to decline review. The ABA, *Standards Relating to Criminal Appeals,* Section 1.3 (approved draft, 1970) permits such appeals, but indicates that they should only be used in exceptional cricumstances.

The standard also recommends that the state should be entitled to appeal from final orders in neglect and abuse cases but limits the state's appeal rights in delinquency and noncriminal misbehavior cases. This reflects the traditional division between civil and criminal proceedings. The commentary to the ABA, *Standards Relating to Criminal Appeals, supra* at 34-35 notes that "[t]he subject of prosecution appeals has occupied more space in articles and lectures than any other topic dealing with criminal appeals . . . [and that] there are considerable differences among the states and the Federal Government as to the appropriate scope of prosecution appeals." The four grounds recommended by the standard follow those proposed by IJA/ABA, *Joint Commission. See Appeals, supra; see also* ABA, *Standards Relating to Criminal Appeals, supra.*

Paragraph (a) provides an opportunity for the state to challenge a ruling by the family court that a state statute violates the federal or state constitution. This is to assure that questions of constitutional dimension receive full review and that there will be a definitive ruling on which the public and state and local officials can base future conduct. Paragraphs (b) and (c) provide for state appeals of pretrial rulings that preclude or significantly impede prosecution of the case. Opportunity for such appeals has been recommended by the ABA, *Standards Relating to Criminal Appeals, supra,* and the President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society,* 140 (1967), as well as by the IJA/ABA, *Appeals, supra. See also* 18 U.S.C. Section 3734 (Supp. 1971). Paragraph (d) recommends that the state be able to appeal orders denying transfer of a delinquency case to another division of the highest court of general jurisdiction for trial as a criminal proceeding *See* Standard 3.116 and 3.121. It is anticipated that such appeals will take place soon after entry of the order and not after disposition in order to avoid the inherent difficulty of trying to reconstruct a transfer hearing after adjudication or trial. *See* IJA/ABA, *Standards Relating to Waiver of Juvenile Court Jurisdiction,* Standard 2.4 (tentative draft, 1977).

Finally, the standard recommends that the right to appeal dispositional orders should be extended to other parties materially affected by those orders—e.g., parents or service agencies in noncriminal misbehavior cases. Consistent with the IJA/ABA Joint Commission provision and Standard 3.133, parents should not be authorized to appeal a delinquency adjudication on their child's behalf.

In order to avoid unnecessary delay and uncertainty, strict time limits on appeals are recommended in Standard 3.161. To assure the fairness and adequacy of appellate proceedings, Standard 3.192 provides for counsel on appeal and the availability of a transcript or other record of the family court proceedings. Furthermore, it is anticipated that in most cases, the order of the family court will be stayed pending appeal. The family court should be authorized to stay its order upon application by the respondent. The decision whether or not to stay a dispositional order should always take into account the safety and needs of the juvenile. Criteria to guide such decisions should be developed to promote consistency. *See* IJA/ABA, *Appeals, supra* at Standards 5.1-5.3.

Related Standards

3.158	Review Modification and Appeal of Detention Decisions
3.161	Case Processing Time Limits
3.162	Extension and Computation of Case Processing Time Limits
3.168	Motion Practice
3.171	Rights of the Parties
3.189	Review and Modification of Dispositional Decisions
3.1812	Review of Dispositional Orders—Neglect and Abuse
3.192	Right to Counsel and a Record of the Proceedings
3.2	Noncourt Adjudicatory Proceedings

3.192 Right to Counsel and a Record of the Proceedings

Parties entitled to appeal under Standard 3.191 should be entitled to be represented by counsel and to a copy of the verbatim transcript of the family court proceedings and any matter appearing in the court file. Counsel should be appointed if the party meets the criteria set forth in Standard 3.132 or Standard 3.133. The transcript and other materials should be provided at public expense if a party is unable to obtain it for financial reasons.

After announcing and explaining the dispositional decision, the family court judge should inform the parties of their right to appeal, the time limits and manner in which an appeal must be taken, and their rights to counsel on appeal and to the record of the proceedings.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Appeals,* Standards 3.1-3.3, and 4.2 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Appeals*]; *see also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 13.8 and 16.7 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard sets forth the ancillary rights required to effectuate the right of appeal. It is intended that the right to counsel and to a record of the proceedings apply when a respondent or other private party is the appellee as well as when he/she is the appellant.

The standard recommends that any party entitled to an appeal under Standard 3.191 should be entitled to counsel for that appeal and to have counsel appointed if they meet the eligibility requirements set out in Standards 3.132 and 3.133. Although *In re Gault,* 387 U.S. 1 (1967) did not hold that the right to appeal delinquency adjudications is constitutionally required, once an appeal is provided, both the due process and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution would seem to require that a fair and adequate procedure for appeal be provided. Counsel to identify and argue the issues on appeal appears essential to the fairness and adequacy of the proceedings. *See, e.g., Douglas v. California,* 372 U.S. 353 (1963); ABA, *Standards Relating to Criminal Appeals,* Section 3.2 (approved draft, 1970); IJA/ABA, *Appeals, supra; Report of the Task Force, supra.* Because fundamental rights are at issue in noncriminal misbehavior and neglect cases as well as in delinquency proceedings, the right to counsel on appeal is extended to parties in all three types of proceedings. *Accord,* Standards 3.131-3.133, and 3.171.

The same reasoning applies to the provision of a full record of the proceedings. *See, e.g., Griffin v. Illinois,* 351 U.S. 12 (1956); ABA, *supra,* Section 3.3; President's Commission, *supra;* IJA/ABA, *Appeals, supra; Report of the Task Force, supra; see also* U.S. Department of Health, Education and Welfare, *Model Act for Family Courts,* Section 54(c) (1975). As was noted by the Supreme Court in the *Gault* case:

> Failure to make a record, may be . . . to saddle the reviewing process with the burden of attempting to reconstruct a record and to impose upon the juvenile judge the unseemly duty of testifying under cross-examination as to the events that transpired in the hearings before him. *In re Gault,* 387 U.S. at 58.

However, nothing in the standard is intended to prevent the parties from stipulating to a mutually agreeable statement of the facts and history of the case in lieu of a verbatim transcript. *See* IJA/ABA, *Appeals, supra* at Standard 4.3.

The explanation called for in the second paragraph of the standard, like the notices provided for in Standards 2.242-2.244, 2.247, 2.342-2.343, 3.146, 3.155-3.157, 3.166, 4.47, and 4.81, is to assure that the parties fully understand their rights. It is to be made by the family court judge immediately following the description of the terms of disposition and the statement of the facts and reasons underlying the dispositional decisions that is called for in Standard 3.188.

Related Standards

1.532	Access to Court Records
3.131	Representation by Counsel—For the State
3.132	Representation by Counsel—For the Juvenile
3.133	Representation by Counsel—For the Parents
3.134	Role of Counsel
3.171	Rights of the Parties
3.188	Dispositional Hearings
3.191	Right to Appeal
3.2	Noncourt Adjudicatory Proceedings
4.54	Disciplinary Proceedings

3.2 Noncourt Adjudicatory Proceedings

Whenever a government agency, institution, or program seeks to abridge substantially a juvenile's rights, curtail essential benefits accruing to a juvenile, or impose serious sanctions against a juvenile, there should be a hearing to determine whether the allegations on which the proposed action is based are true and whether the proposed government action is appropriate. In conjunction with such a hearing, the juvenile should be entitled to:

- **a. Timely written notice of the allegations;**
- **b. Representation;**
- **c. Present evidence and call and cross-examine witnesses;**
- **d. An impartial decision maker;**
- **e. Written findings delineating clearly the facts and reasons underlying the decision; and**
- **f. An opportunity for review.**

Sources:

See generally Goldberg v. Kelly, 397 U.S. 254 (1970); *Morrissey v. Brewer*, 408 U.S. 471 (1972); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Schools and Education*, Standards 5.1-5.3, and *Standards Relating to Corrections Administration*, Standard 8.9 (tentative drafts, 1977) [hereinafter cited as IJA/ABA, *Education*, and IJA/ABA, *Corrections Administration*, respectively]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 20.5 and 20.6 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

The family court is not the only forum in which juveniles may have to defend against or challenge the deprivation of their rights. Executive branch agencies are authorized to impose disciplinary measures including room confinement against juveniles in correctional facilties, *See* Standard 4.54, or expel juveniles from school; and to terminate welfare payments or other essential benefits accruing to juveniles. This standard sets forth the procedural rights that should apply to administrative determinations to impose such sanctions. It reflects the belief that juveniles as well as adults are entitled to those due process rights necessary to preserve fundamental fairness. The standard is intended to be broad enough to allow for the diversity of out-of-court adjudications and yet specific enough to assure that minimum safeguards are present whenever a significant deprivation or sanction is possible regardless of the form of purpose of the proceeding.

The Supreme Court has stated on a number of occasions that "the 'right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.'" *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 168 (1951) (Justice Frankfurter, concurring) as quoted in *Mathews v. Eldridge*, 424 U.S. 391, 333 (1976). Hence, the standard recommends that there should be a hearing whenever there is a substantial abridgment of a juvenile's rights, termination of an essential benefit to a juvenile, or imposition of a more than a *de minimus* sanction against a juvenile by a public agency. *See Goldberg; Morrissey; Goss v. Lopez*, 419 U.S. 565 (1975). Whether or not this hearing must precede the agency's action depends on the interest at stake, the impact of the action on the juvenile, and the burden that such a hearing would create on the agency. *Mathews*, 424 U.S. at 335; *see Parham v. J.R.*, 442 U.S. 584 (1979).

The notice requirement recommended in paragraph (a) is intended to afford the juvenile an opportunity to prepare a defense to the allegations. To allow the construction of such a defense, the notice should include the reasons for the agency's action or the conduct of the juvenile on which that action is based and the procedural protections to which the juvenile is entitled throughout the proceedings. *See* Standard 3.164, IJA/ABA, *Corrections Administration, supra; Goldberg; Morrisey; In re Gault*, 387 U.S. 1 (1967); *see also Goss*.

Paragraph (b) recommends that juveniles be entitled to representation at noncourt adjudicatory proceedings. The paragraph is not intended to suggest that such representation must be provided by an attorney. An agency staff member not involved in the preparation of the action, a volunteer from a regular volunteer program, an ombudsman, or a law student may be able to perform this advocacy role satisfactorily. *See* Standard 4.54; *Wolff v. McDonnell*, 418 U.S. 546, 592 (Justice Marshall concurring in part, dissenting in part); *accord*, IJA/ABA, *Corrections Administration, supra; but see*, IJA/ABA, *Education, supra*. Although stating that a welfare recipient "must be allowed to retain an attorney if he so desires," in order to defend against a termination of welfare benefits, *Goldberg*, 397 U.S. at 270, the Supreme Court has held that counsel is not constitutionally required in most disciplinary proceedings, in most parole or probation revocation proceedings, or in proceedings to suspend a child from school for ten days or less. *Wolff; Morrissey; Gagnon v.*

Scarpelli, 411 U.S. 778 (1973); *Goss*. Nevertheless, the National Advisory Committee concluded that at least some assistance in "delineat[ing] the factual contentions in an orderly manner, conduct[ing] cross-examination, and generally safeguard[ing] . . .," the interests in jeopardy, *Goldberg*, 397 U.S. at 270, is essential to assure fairness for juveniles involved in noncourt adjudicatory proceedings. *Cf.* Standards 3.132 and 3.134.

Paragraph (c) recommends that juveniles be entitled to present evidence and to call and cross-examine witnesses. In *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959), the Supreme Court observed that:

> Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealously. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment . . . This Court has been zealous to protect these rights from erosion. It has spoken out not only in criminal cases . . . but also in all types of cases where administrative . . . actions were under scrutiny.

See Goldberg, 397 U.S. at 270; *see also Morrissey*. However, the Court limited the rights to present evidence and call witnesses in prison disciplinary proceedings to situations in which permitting an inmate to do so "will not be unduly hazardous to institutional safety or correctional goals," and left whether to permit cross-examination "to the sound discretion of the officials of state prisons." *Wolff*, 481 U.S. at 566, 569. Moreover, in *Goss*, 419 U.S. at 583, the Court concluded that simply allowing the juvenile "to give his version of the events will provide a meaningful hedge against erroneous action, "although it indicated that when expulsion or suspensions of longer than ten days are involved or in "unusual situations" involving short suspensions, "more formal procedures" may be required. *Id.* at 584. Both the IJA/ABA Joint Commission and the *Report of the Task Force, supra;* urge that juveniles be provided the means for demonstrating that the agency's case is untrue. IJA/ABA, *Corrections Administration, supra;* IJA/ABA, *Education, supra; Report of the Task Force, supra.* In the disciplinary hearing context, the Task Force reasoned that:

> The court in *Wolff* did not view this right as a mandate of due process because of its concern about the risk of reprisals by adult prison inmates, one against the other, should the court declare this a constitutional requirement. However, in juvenile institutions where primary emphasis is placed on programs of re-education and rehabilitation the likelihood of violent reprisals is far less severe.

Following these recommendations, the National Advisory Committee concluded that whether constitutionally required or not, juveniles should be accorded the rights to present evidence and to call and cross-examine witnesses in situations meeting the "seriousness" requirements discussed above. *See* Standards 3.171 and 3.1810.

The impartial decision maker called for under paragraph (d) may be an administrative board, an appointed or agreed-upon arbitrator, or a single agency official. The individual or individuals serving in the adjudicatory function should not have been involved in the investigation or preparation of the case or have a personal interest in its outcome. The importance of a "neutral and detailed hearing body" was stressed in both the *Goldberg* and *Morrissey* decisions. See also, *Wolff;* IJA/ABA, *Education, supra;* IJA/ABA *Corrections Administration, supra; Report of the Task Force, supra; but see Goss.*

Paragraph (e) recommends that at the conclusion of the hearing, the decision-making body or individual prepare written findings explaining the basis for the decision. This is part of the effort throughout these standards to make discretionary decisions more consistent, comprehensible to the parties, and open to review. *See, e.g.*, Standards 3.147, 3.155-3.157, and 3.188. Each of the sources for this standard lists a written statement by the hearing board or official regarding the facts relied on and the reasons for the decision as a minimum requirement of due process. *See Goldberg; Morrissey;* IJA/ABA, *Corrections Administration, supra;* IJA/ABA, *Education, supra; Report of the Task Force, supra;* but see, *Goss v. Lopez, supra; Parham, supra.*

Finally, as a means of assuring that the above rights have been afforded, that the decision is supported by the evidence, and that any action taken is in accordance with the law, paragraph (f) urges that the juvenile have a right to judicial or administrative review. Such a right to review from administrative decisions is already provided in one form or another in most states. See Standards 3.191, 4.54, 4.71, and 4.72. *Report of the Task Force, supra* at Standard 20.6; IJA/ABA, *Education, supra;* IJA/ABA, *Corrections Administration, supra.*

As is evident from the above-cited decisions of the Supreme Court, adjudicatory decisions are made at many levels and constitutional guarantees are not limited to the courthouse. The National Advisory Committee is confident that the introduction of due process procedures whenever significant rights of or benefits to a juvenile are threatened will enhance rather than disrupt or impede the operation of schools, correctional facilities, and other agencies and thereby improve the administration of juvenile justice.

Related Standards

1.55	Accuracy of Records
1.56	Destruction of Records
3.131	Right to Counsel—For the State
3.132	Right to Counsel—For the Juvenile
3.133	Right to Counsel—For the Parents
3.171	Rights of the Parties
4.33	Imposition and Enforcement of Regulations
4.54	Disciplinary Procedures
4.71	Transfers From Less Secure to More Secure Facilities
4.72	Transfers From More Secure to Less Secure Facilities
4.81	Grievance Procedures

THE SUPERVISION FUNCTION

The Supervision Function

Introduction

A 1973 survey found 74,990 juveniles in custody on a single day in detention centers, shelter care facilities, training schools, forestry camps and ranches, group homes, and similar residential facilities throughout the United States. *Children in Custody: Advance Report on the 1977 Census of Juvenile Public Facilities*, 2 (1979); *Children in Custody: Advance Report on the 1977 Census of Juvenile Private Facilities*, 2 (1979). Thousands of other juveniles were placed in foster homes or under some form of probation or community supervision. This chapter sets forth standards concerning the responsibility for, the nature of, and the procedures that should apply to residential and nonresidential programs which supervise juveniles and families subject to the jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse. The term supervision was selected to characterize these programs, since no matter what their rationale or emphasis—treatment, punishment, or protection—each has the basic responsibility of supervising the persons placed in it by the family court.

The chapter is divided into eight series of standards. The two standards in the first series, Standards 4.11-4.12, recommend that the states should assume the responsibility for providing necessary supervision programs.

The second series, Standards 4.21-4.27, defines seven types of residential facilities and describes the size of the staff and services which should be available in each. The standards urge that residential facilities other than camps and ranches, be in or near the communities from which they draw their population and recommend a low treatment staff-to-youth ratio and access by juveniles placed in residential facilities to a full range of educational, counseling, health, mental health and recreational programs. The increased costs which may result from the implementation of these recommendations can be substantially offset, through the utilization of community rather than in-house services, and through placing fewer juveniles in residential programs and reducing the length of their stay in such programs in accordance with the principle, emphasized throughout these standards, of employing the least restrictive alternative. *See, e.g.*, Standards 2.231-2.233, 3.151-3.158, 3.181-3.189, 4.219, and 4.52. It was the conclusion of the National Advisory Committee that any increased costs which are not so offset, should be considered the necessary price of realizing the rehabilitative ideal on which the juvenile justice system is based.

The standards in the 4.3 series cover the organization of nonresidential programs to supervise persons subject to the jurisdiction of the family court, the services which should be available to such persons, and the imposition and enforcement of regulations by community supervision officers.

The fourth series of standards in this chapter contains a list of some of the rights to which juveniles in residential facilities and under community supervision are entitled. Standards 4.41-4.411. These include the right to receive and send mail, to receive visitors, to participate in the religious observances of their choice, to have notice of the rules and regulations to which they are subject, and to a basic level of treatment and care. The provisions seek to assure as normal an environment as possible for program participants while accommodating necessary safety and administrative concerns.

The remaining series of standards recommend principles and procedures governing discipline in residential programs, Standards 4.51-4.54, the use of restraints, Standards 4.61-4.62, and transfers among programs with differing levels of security or to programs provided by other agencies, Standards 4.71-4.73, as well as urging that grievance procedures and ombudsmen be available to juveniles in residential programs and subject to community supervision. Standards 4.81-4.82; *see also* Standard 1.126. It is anticipated that the recommended system of mutural rights and responsibilities will help program participants and staff to work together in an atmosphere of greater trust and respect than has characterized many supervisory programs in the past.

As noted througout this volume, these standards are not expected nor intended to be cast in stone. The National Advisory Committee will continue to review its recommendations in light of their impact in practice, additional research on supervision programs and procedures, and expert opinion, making modifications whenever necessary. However, it is confident that when implemented, the standards proposed in this chapter will enhance efforts to encourage law-abiding conduct and to protect the safety and welfare of both juveniles and adults.

4.1 Administrative Responsibility

4.11 Role of the State

The state should be responsible for providing directly or subsidizing the provision of the residential programs for juveniles subject to the jurisdiction of the family court over delinquency, noncriminal behavior, and neglect and abuse, and nonresidential programs for juveniles and/or their families subject to that jurisdiction.

Ordinarily, such programs should be administered by a single state agency. They should be designed and operated in accordance with the state juvenile service plan and the state standards and guidelines described in Standards 1.122-1.123, and should be subject to the evaluation process recommended in Standard 1.125.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration*, Standards 2.1 and 2.5 (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*].

Commentary

This standard places responsibility for the provision of juvenile services on the state level and calls for centralized administration by a single state agency. In so doing, the standard is in accord with the IJA/ABA, *Correctional Administration, supra* at Standard 2.1. Such consolidation of authority should increase coordination in the delivery of services, thereby reducing duplication and overlap. *See generally* IJA/ABA, *Corrections Administration, supra* at Commentary to Standard 2.1. The provision of services and the administration of such programs are distinct from the prevention function. Prevention should be viewed as:

> A process and the activities resulting from that process directed at encouraging law-abiding conduct and reducing the incidence of criminal activity of all youth under eighteen years of age except those who are receiving services on other than a voluntary basis as a result of contact with the juvenile justice system.

Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice, 56 (March 1977). Supervision, on the other hand, encompasses all of the services provided to children during the period between the filing of a petition with the juvenile court system and their ultimate release from the court control.*

There has been much criticism of the fragmentation extant in correctional systems, and authorities favoring centralization claim it will lead to improvements in standards, accountability, fiscal and administrative control, diversity and specialization of services, and funding mechanisms. IJA/ABA, *Corrections Administration, supra. See* President's Crime Commission, *Task Force Report: Corrections*, 137 (1976); "Model Penal Code, Part IV, The Organization of Corrections" (1962); R. Carter et.al., *Corrections in America*, 233 (1975); Schoen, "The Positive Aspects of Unified Correctional Programs," *Proceedings of the Second Annual Management Seminar*, 9 (National Association of State Juvenile Delinquency Program Administrators, 1974). *See also* Commentary to Standard 1.124(b).

The range of services to be provided by the state encompasses both residential and nonresidential programs, specifically including the following: Training Schools (Standard 4.21 *et.seq.*), Camps and Ranches (Standard 4.22 *et.seq.*), Group Homes (Standard 4.23 *et.seq.*,), Foster Homes (Standard 4.25 *et.seq.*,), Detention Facilities (Standard 4.26 *et.seq.*), Shelter Care Facilities (Standard 4.27 *et.seq.*), and Community Supervision (Standard 4.31 *et.seq.*). The population to be served includes both children and families subject to family court jurisdiction by virture of delinquency, noncriminal misbehavior, and abuse or neglect.

It is significant to note that this standard differs from that proposed by the IJA/ABA, *Corrections Administration, supra*, regarding the population to be served. IJA/ABA, *Corrections Administration, supra* at Standard 2.1 limits the scope of the consolidated state authority to the provision of services for adjudicated juveniles and recommends a separate state agency to administer all pre-adjudication programs. IJA/ABA, *Corrections Administration, supra* at Commentary to Standard 2.1. This standard, however, is clearly not so limited. The standards which follow establish guidelines for the various programs to be administered by the single state agency and include provisions for detention centers and shelter care facilities. Standards 4.26-4.27. These programs are to provide care for youth "pending adjudication, disposition

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*Standard 3.142 urges that the practice of the so-called "informal probation" be discontinued. *Accord*, R. Kobetz and B. Bosarge, *Juvenile Justice Administration*, 256 (International Association of Chiefs of Police, 1973).

or appeal." Standards 3.151 and 3.153. In other words, the standard calls for the entire continuum of court-ordered supervision to be provided under the authority of one agency. *Accord,* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile and Delinquency Prevention,* Standards 19.1 and 19.3 (1976) [hereinafter cited as *Report of the Task Force*]. There is no consensus among authorities about which services should be combined under a single authority. R. Sarri et. al., *Juvenile Injustice: Failure of a Nation,* 32 (1974). This administrative model, however, avoids the criticized proliferation of agencies and furthers the goal of greater coordination of services. *See generally* IJA/ABA, *Corrections Administration, supra* at Commentary to Standard 2.1.

The state can fulfill its responsibility as service provider in basically two ways. Naturally, the state can directly operate supervision programs in the juvenile services system. However, these standards also recognize the desirability of utilizing local government and private sector resources. Thus the state may also provide services indirectly by subsidizing local and private programs.

In some circumstances it may not only be appropriate but desirable to maintain programs in local public or private hands. These standards acknowledge, for example, that because of their unique knowledge of their political, economic, and social circumstances, members of the local community have an invaluable contribution to make to the juvenile service system. Although the primary local role contemplated by the standards is in planning, this knowledge makes the local community an important service provider in some circumstances. *See* Standard 1.111 and Commentary. Moreover, authorities have noted certain advantages to be gained by utilizing private programs as well as public ones. IJA/ABA, *Corrections Administration, supra* at Standard 2.5(A) prefers a purchase of service arrangement between the state and private sector when the latter can provide access to programs not otherwise available. IJA/ABA, *Corrections Administration, supra* at Commentary to Standard 2.5. Private programs also facilitate experimentation and the development of innovative programs. President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Corrections,* 113 (1967). Finally, there has been a long history of service provision for youth by the private sector and the subsidizing of these programs is one way to tap the expertise in the field.

Regardless of whether the programs are provided directly by the state or indirectly through subsidy, the standard requires that all programs be subject to state supervision. Standard 1.122 calls for the development of a statewide juvenile service plan and this standard requires that all program be designed and operated in accordance with it. In addition, all programs must comply with the guidelines established in Standards 1.122-1.123, as well as with those contained in the standards on *The Supervision Function,* and all will be similarly evaluated as directed by Standard 1.125. The coordination of services, accountability, etc., to be gained by centralized administration will thereby be maintained even if the direct provision of services is accomplished by entities other than the state.

Finally, it should be noted that the state agency to be established pursuant to this standard is distinct from the planning agency called for by Standard 1.121. *Contra, Report of the Task Force, supra* at Standards 2.3 and 19.3. *Contra,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Planning For Juvenile Justice,* 2.1(B) (1977). Though the two are interrelated in their objective, the latter is to serve basically in a planning and evaluative capacity. This organization separates responsibility for policy making and support services from the direct service provision so that neither agency is encumbered with the very different tasks of the other and each remains best able to exercise its function independently. *See generally* Standard 1.121 and Commentary. This separation of function appears to be particularly beneficial for maintaining impartiality in evaluation and distribution of subsidy funds. *See* Standards 1.124(b) and 1.125.

Related Standards

1.111	Organization of the Local Juvenile Service System
1.121	Organization of the State Juvenile Service System
1.122	Development of the State Juvenile Service Plan
1.123	Development of State Standards and Guidelines
1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.153	Criteria for Detention and Release—Noncriminal Misbehavior
4.21	Training Schools
4.22	Camps and Ranches
4.23	Group Homes
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.31	Community Supervision

4.12 Role of the Federal Government

The operation of residential and nonresidential programs by the Federal Government for juveniles adjudicated delinquent by the United States district courts should be discontinued. When such services are required, they should be obtained through contracts with state and local agencies or private organizations and individuals.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 2.4(b) (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*]; Juvenile Justice and Delinquency Prevention Act of 1974, §510—18 U.S.C. §5040 (Supp. 1976).

Commentary

There is a general consensus among authorities that the Federal Government should not be responsible for the administration of supervisory programs for juveniles adjudicated delinquent by the federal courts. In accord with this position are the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* at Commentary (1976) [hereinafter cited as *Report of the Task Force*]; the White House Conference on Youth Report Resolution, 7.23(a) (1977); and IJA/ABA, *Corrections Administration, supra* at Standard 2.4(B). Standard 3.114 likewise seeks to minimize federal court jurisdiction over juvenile offenders as well.

> The Federal Government is divorced from the immediate scene in which youth are engaging in illegal behavior and therefore should not attempt to solve delinquency problems by providing services directly. *Report of the Task Force, supra.*

Available data indicate that, not only is the Federal Government far removed from the delinquency problems of particular states and localities, but in addition, its involvement with delinquents is quite limited. As of February 1, 1979, federal probation officers supervised only 188 juveniles, and as of December 31, 1978, federal facilities housed only 18 persons adjudicated under the Federal Delinquency Act. As a result, personnel in the federal correctional system have little opportunity to develop expertise in the special problems of the delinquent offender.

Another important reason for eliminating federal correctional programs is that existing facilities are often far from the youth's home and family. Standard 4.24 recommends a preference for the development of community correctional facilities over noncommunity-based operations, and defines community-based facilities as those located within the community from which its residents are drawn. The local facility is favored because it best achieves the goal of successful reintegration of the youth into the community, and because it enables the youth to retain ties with friends and family. *See* Standard 4.2111 and Commentary; and IJA/ABA, *Corrections Administration, supra* at Standard 2.4(B) and Commentary.

Although federal adjudication of delinquents can be minimized, special jurisdictional circumstances will force some youths to be adjudicated by United States District Courts. *See* Standard 3.114 and Commentary. For these juveniles, the standard recommends that the Federal Government contract for correctional services with state, local, or private programs. There is legislative authority for such procurement under the Juvenile Justice and Delinquency Prevention Act of 1974, 18 U.S.C. §5040 (1976) which states (inter alia):

> The Attorney General may contract with any public or private agency or individual and such community-based facilities as halfway houses and foster homes for the. . .custody and care of juveniles in his custody.

This approach will remedy the problems of current federal corrections outlined above. Moreover, it will serve objectives proposed throughout these Standards, i.e., the avoidance of duplication, the need for coordination in service delivery, and the maintenance of close links between the offender and his/her home. When the Federal Government does contract for services, it should ensure that the service provider is in compliance with all of the Standards in the *Supervision Function.*

The Federal Government has an important role in the juvenile justice system. The Federal Government, through one central executive agency, should function in an enabling capacity, providing information, funding, technical assistance, and training for state and local programs, developing national standards and goals, and performing regular evaluations of efforts on all levels. In short, the Federal Government can best serve the interests of the juvenile justice system by focusing its attention on the development of an organizational system at the state and local levels and on the provision of critical financial and other resources. *See generally* Standards 1.131-

1.134 and Commentaries; IJA/ABA, *Corrections Administration, supra* at Standard 2.4 and Commentary.

Finally, it must be reiterated that this standard is not intended to criticize the performance of the Federal Goverment in its present capacity. Rather, it is a recognition tha the appropriate—indeed the most effective role for the Federal Government—lies outside the direct delivery of services, and that the administration of juvenile supervision should be a state responsibility..

Related Standards

1.131	Organization and Coordination of the Federal Juvenile Service System
1.132	Development and Implementation of National Juvenile Justice and Delinquency Prevention Standards
1.133	Distribution of Finanical and Technical Resources
1.134	Evaluation of Federal, State, and Local Activities
3.114	Jurisdiction of the Federal Courts over Delinquency
4.2111	Training Schools—Location

4.2 Residential Programs
4.21 Training Schools

A training school is a residential facility in which access and egress are controlled by the staff, and which is used exclusively for the placement of juveniles adjudicated pursuant to the jurisdiction of the family court over delinquency. The training school is usually characterized by physically restrictive construction or location, by procedures which are intended to prevent the juveniles placed therein from departing at will, and by the provision of a range of academic, vocational, and treatment services.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.2 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Interim Status,* Standard 2.10 (tentative draft, 1977).

Commentary

This standard defines the term "training school." It reflects the almost uniform position held by other standards groups and commentators that a secure facility of the training school type should be used as a last resort and only for the adjudicated delinquents who, because of the nature of the offense, or because of his/her own situation needs intensive structure and control. *Report of the Task Force, supra* at Standard 24.2 As Norval Morris states in *The Future of Imprisonment* (1974).

> It is widely recognized that we have locked up too many social nuisances who are not social threats, too many petty offenders and minor thieves, severing such social ties as they have and pushing them further toward more serious criminal behavior. This excessive use of incarceration . . . has been expensive, criminogenic, and unkind.

The need to strictly limit the number of adjudicated delinquents sent to a training school has been addressed in Standards 3.181, 3.182, and 3.183. By urging that the population of training schools be limited to juveniles who have been adjudicated delinquent, this standard is consistent with the recommendation in Standard 3.183 that in no case should the dispositional order in a noncriminal misbehavior proceeding, or its enforcement, result in the confinement of a juvenile in a secure detention or correctional facility.

While some have argued that large congregate facilities should be abolished, this standard and those that follow are based on the belief that training school are likely to remain a part of many, though not all, juvenile correctional systems for some time. *Cf.* L. Ohlin, A. Miller, and R. Coates, *Juvenile Correctional Reform in Massachusetts* (1977). Less than one-quarter of all public, nonfederal juvenile detention and correctional facilities in the United States (22 percent in 1974), house more than half of the incarcerated juvenile population (56 percent in 1974). *See Children in Custody: Advance Report of the Juvenile Detention and Correctional Facility Census of 1974 (1977).*

The standards in this series are not intended as an endorsement of construction of additional training schools, but rather as a guide for renovation and improvement of existing facilities. To the greatest extent possible, new construction should be limited to the type of community correctional facility described in Standard 4.24. *See also* Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §§5633(10) (1977).

In defining what a training school is, and in the standards related to training schools, the National Advisory Committee recognized that training schools have the responsibility to provide both security and treatment. As a facility which is usually characterized by its physically restrictive construction or location, training schools are supposed to prevent the youths placed therein from having free access to the community. The definition is intended to include facilities with high fences or walls, facilities with locked gates or doors and secured windows, and facilities other than camps and ranches, *see* Standard 4.22, which are isolated by natural barriers. The term "procedures . . . to prevent juveniles . . . from departing at will," is intended to include the monitoring or guarding of all exists or entrances, sign-out or "gates pass" requirements, and similar measures designed to assure the prevention and prompt detection of any attempt to leave the facility without authorization

While these characteristics describe some of the possible means of maintaining perimeter security, they should not be characteristic of the level of security within the grounds of the training schools. Inside the facility, youths should be allowed to move about freely. For youths who demonstrate particularly violent or severely disruptive behavior, and who pose a danger to residents and staff, the standards provide for a high security unit. Standards 4.219-4.2194. It should be emphasized, however, that in high security units, as well as in training schools themselves, intensive staffing should be preferred over physical barriers and mechanical devices as the way for providing for the safety of the community, residents, and staff.

In addition to providing security, training schools are expected to provide a range of academic, vocational, and other treatment services to prepare the individual for successful reintegration into his/her community. These services, together with the size and qualifications of staff required to provide them are discussed in detail in Standards 4.2121-4.218. Because of security requirements, it is generally not feasible to rely on community resources to provide these services. However, community services should be used whenever adequate supervision can be provided or whenever staff determine that a youth has demonstrated sufficient responsibility to participate in selected community activities.

It is the hope of the National Advisory Committee that through implementing the standards on size, location, and administration of training schools, and providing the recommended levels of staff and services, the impact of institutionalization on juveniles placed in such facilities can be minimized and the security and programmatic functions of training can be made to complement rather than conflict with each other.

Related Standards

3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.189 Review and Modification of Dispositional Decisions
3.1810 Enforcement of Dispositional Orders—Delinquency
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
4.11 Role of the State
4.211 Training Schools—Physical Charactertistics and Population
4.212 Training Schools—Staff
4.213 Training Schools—Services
4.214 Development of a Treatment Plan
4.215 Group Counseling and Treatment Services
4.216 Educational Services
4.217 Health and Mental Health Services
4.218 Recreational Services
4.219 High Security Units
4.41 Mail and Censorship
4.42 Rights of Juvenile—Dress Codes
4.43 Personal Appearance
4.44 Rights of Juveniles—Visitation
4.45 Religious Freedom
4.46 Responsibility for Control and Apprehension of Juveniles
4.47 Notice of Rules
4.48 Rights of Juveniles—Searches
4.49 Work Assignments
4.51 Discipline—Corporal Punishment
4.52 Discipline—Confinement
4.53 Loss of Privileges
4.54 Disciplinary Procedures
4.61 Mechanical Restraints
4.62 Medical Restraints
4.71 Transfers From Less Secure to More Secure Facilities
4.72 Transfers From More Secure to Less Secure Facilities
4.73 Transfers Among Agencies
4.81 Grievance Procedures
4.82 Ombudsman Program

4.211 Physical Characteristics and Population

4.2111 Location

Training schools, to the greatest extent possible, should be located in or near the communities from which they draw their population. Such facilities should not be on the grounds of an institution used to house adults accused or convicted of committing a criminal offense.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 19.6 and 24.2 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

The standard recommends that training schools be located in or near the community from which they draw their population. *See Report of the Task Force, supra* at Standard 24.2. Although the IJA/ABA Joint Commission does not specifically address the physical location of the training school, it strongly urges that in the determination of program placement there should be a strong presumption in favor of retaining juveniles within their communities, and against disrupting a juvenile's cultural and geographic roots. It also stresses that links between juveniles and their homes be preserved. *See* Institute of Judicial Administration/American Bar Association Joint Commission, *Standards Relating to Correctional Administration,* Standard 7.3 (tentative draft, 1977).

Placement of juveniles in a training school is still only a temporary measure and all juveniles assigned to a training school will eventually return to the community. It is critical that constructive community ties remain intact (or in some cases be developed) during a youth's period of incarceration, if the goal of successful reintegration into the community is to be achieved. *See* McEwen, "Subcultures in Community-Based Programs," appearing in L. Ohlin, A. Milier, R. Coates, *Juvenile Correctional Reform in Massachusetts* (1977). Close proximity of training schools to the community and encouragement from the administration, enable training schools to take advantage of valuable community resources in the form of volunteer efforts inside the facilities, and whenever appropriate, involvement of the residents in community activities—such as educational, sporting, recreational, or cultural events.

Locating training schools in remote areas creates an additional barrier between juveniles and their communities. Distance accentuates the isolation of juveniles from family, friends, school, and other socializing agents. For those families who do not have access to a car, frequent visitation may not be possible because of the cost or lack of public transportation to distant locations. The more difficult visits are to arrange, and the less frequent they become, the less a youth can emotionally afford to count on them to sustain him/her through a long period of incarceration.*

This situation fosters the tendency for juveniles to lose contact with the community and become dependent on the training school staff, other facility residents, and the general social environment to fulfill the needs otherwise provided by community contacts. The more assimilated into a program juveniles become, the more difficult it is for them to leave. McEwen, *supra* at 50. The danger of institutionalization must be recognized and a concerted effort should be made to overcome this distance and encourage community involvement in the institution, especially in those facilities located in remote areas.

This standard further specifies that the training school should *not* be located on the grounds of an institution used for housing adults accused of or convicted of committing a criminal offense. *See Report of the Task Force, supra* at Standard 19.6 This provision is consistent with the law in many states regarding the separation of juvenile and adult offenders. Historically, this concept is founded on the principle that children and youth are emotionally and physically vulnerable to adults. The standard requires more than merely separate housing units, floors, cottages, or wings in a single facility. To insure that contact is not possible, juvenile facilities should not be on the same compound, or within the perimeter of a security fence as adult facilities. This restriction is also meant to prohibit work teams from nearby adult correctional facilities from providing regular

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*As reported in *Children in Custody: A Report on the Juvenile Detention and Correctional Facility Census of 1971, 4 (1974),* the estimated average length of stay for inmates in training schools was 8.7 months—nearly the length of an entire school year.

institutional maintenance, such as housekeeping, plumbing, electrical, or food services, in facilities which house juveniles.

Related Standards

3.182 Criteria for Dispositional Decisions—Delinquency
4.21 Training School
4.26 Detention Facilities
4.71 Transfers From Less Secure to More Secure Facilities
4.72 Transfers From More Secure to Less Secure Facilities
4.73 Transfers Among Agencies

4.2112 Size and Design

Training schools should house no more than 100 juveniles.

Each living unit within the training school should not exceed a bed capacity of 20. The design of the living unit should provide for a mixture of private and semi-private rooms to be assigned on the basis of the needs and preferences of the juvenile. Each living unit should make provision for game rooms, study areas, and staff offices. In addition, the facility should provide for indoor and outdoor physical activities.

Source:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 24.2 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

A central issue regarding training schools is the number of juveniles each facility should house. Size considerations affect the services and treatment programs which can be offered, the level of security required, the location of the training school, and the cost of operations. *See* Standards 4.21, 4.2111, and 4.213-4.218. Taking these factors and the recommendations of other standards-setting groups into consideration, the National Advisory Committee urges that the capacity for training schools not exceed 100 juveniles. *See Report of the Task Force, supra* at Standard 24.2(a). It is anticipated that reducing institutional capacities to 100 should help create an environment which is more conducive to safety, fairness, and normalcy than that which exists today in large impersonal institutions. Data gathered in the *Juvenile Detention and Correctional Facility Census of 1974* (1977) indicate that approximately one out of six of the existing training schools had populations exceeding 300 juveniles, and 72 percent of the training schools housed more than 100 juveniles.

Although there is little agreement among juvenile justice authorities, and even less scientific evidence to support one particular figure as the optimum population of a training school, the following recommendations indicate that there is a general consensus that training school population be substantially reduced:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention* (1976)—a maximum population of 500.

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standard Relating to Corrections Administration* (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Corrections Administration*]—a maximum population of 100 for existing training schools; a maximum of 20 for any new facilities.

Massachusetts Department of Youth Services, *Task Force Report on Secure Facilities* (1976)—a maximum population of 12.

California Youth Authority, *Standards for Juveniles Homes, Ranches, and Camps,* (1972)—a maximum population of 100

President's Commission on Law Enforcement and the Administration of Justice, *Corrections* (1967)—a maximum population of 150.

American Correction Association, *The Manual of Correctional Standards* (1966)—a maximum population of 100.

Child Welfare League of America, *Standards for Services on Child Welfare Institutions* (1974)—a maximum population of 500.

National Conference of Superintendents of Training Schools and Reformatories, *Institution Rehabilitation of Delinquent Youth* (1962)— a maximum population of 150.

National Council on Crime and Delinquency, *Standards and Guides for the Detention of Children and Youth.* (1966)—a maximum population of 100.

Implementation of this provision of the standard may be accomplished by a number of alternatives. Whenever possible, existing facilities should be remodeled to conform to the maximum capacity of 100. However, this should be considered as a transition measure, especially for large facilities that are in remote, isolated areas. *See* IJA/ABA, *Corrections Administration, supra* at Standard 7.2; *see also,* Standard 4.2111. Preferred strategies are to utilize available community alternatives such as community correctional centers, group homes, fosters homes, and shelter care facilities; or where these are not available to develop these recourses in the community. *See* Standards 4.23, 4.24, 4.25, and 4.27.

One alternative which the National Advisory Committee strongly discourages is the construction of new training school facilities in favor of community-based facilities. New training school facilities should be considered only as a last resort when the needs cannot be met by any other means. *See Report of the Task Force, supra* at Standard 24.2.

Because of the ever-present limitation on public funds to support programs for adjudicated delinquents, cost effectiveness will be a primary consideration in implementing this provision. The results of the Massachusetts experience in replacing all juvenile training schools with a variety of smaller community-based facilities offer some preliminary findings regarding both the cost and the effectiveness of the reforms. Although the Massachusetts Department of Youth Services spent less per capita for its correctional programs than most (38) other states in 1974, the anticipated reduction in operation costs did not occur. *See* A. Miller, L. Ohlin, and R. Coates, "Some Observations on the Conceptualization and Replicability of the Massachusetts Correctional Reforms, *Juvenile Correctional Reform in Massachusetts,* 107 (1977). Preliminary recidivism data suggest that the reforms have not resulted in a substantial change either up or down in the overall recidivism rates for the state. However, region-by-region analysis shows rather dramatic shifts in both directions. *See* R. Coates, A. Miller and L. Ohlin, "An Exploratory Analysis of the Recidivism and Cohort Data," *Juvenile Correctional Reform in Massachusetts, supra* at 60. Further exploration of these initial results may offer some explanation for variable performances.

The standard also specifies that each living unit within the training school should not exceed a bed capacity of twenty. Support for a living-unit size of approximately twenty is widespread. *See, e.g., Report of the Task Force, supra* at Standard 24.2; IJA/ABA, *supra* at Standard 7.2; *Corrections, supra* at 212; ACA, *Manual on Corrections Standards, supra* at 588; *see also* D. Knight, *Impact of Living Unit Size in Youth Training School* (California Youth Authority, 1971); C. Jessness, *The Fricot Ranch Study* (California Youth Authority, 1965). Limiting the number of beds in the living unit is not to be interpreted as simple allowing a maximum of 20 juveniles in a large barracks-type dormitory. The purpose of the living units is to establish a cohesive living area which serves as a focal point of the juvenile's daily activities rather than just sleeping quarters. The standard recommends that the living unit contain both private and semi-private rooms. *But see Corrections, supra* at 261. The use of the semi-private rooms provides a setting in which youths can learn to cope with others, develop friendships, and improve their social skills. It also offers a practical means of conserving scarce space, without reverting to a barracks-type atmosphere.

Assignment to private or semi-private rooms should be made on the basis of the needs and preferences of the juvenile. While use of room assignments as a part of a reward system is not excluded, care should be taken that the power to assign rooms is not abused. *See* Standard 4.53. The implied purpose of the small living unit is to provide some degree of personal stability within the larger context of the training school. Constant shifting from one room to another would be counter-productive, requiring readjustments after each move. The following guidelines for the design of the living unit are aimed at providing adequate space for movement, privacy and safety, and maximum individual expression without incurring unreasonable costs.

Sleeping accommodations should provide a minimum of 60 square feet per person and a minimum floor-to-ceiling height of 8 feet. *See* California Youth Authority, *Standards for Juvenile Halls,* Standard 12 (1973); *see also,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Architectural Standards Relating to Group Homes and Secure Detention and Correctional Facilities,* Standard 5.11 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Architecture*]. Except for high security units, *see* Standard 4.219, furniture should be free-standing and able to be arranged to suit individual taste. There should be adequate ventilation and a window to allow sunlight. Sufficient storage space should be provided for personal belongings. At least five (5) toilet, sink, and shower facilities should be located in each living unit. *See* IJA/ABA, *Architecture, supra.*

Space for staff offices should be located within the living unit to provide an area which may be used for private conferences or group discussions. To accommodate the busiest shift, this would require two offices in the living unit area. *See* Standard 4.2121. Presence of staff in the living area offers a degree of personal control and constant availability to provide immediate assistance or intervention as the situation warrants.

The space set aside for indoor recreation facilities will, to some extent, depend on the climate in which the school is located. A minimum of 75 square feet per juvenile should be provided to include a gymnasium area for the entire training school, and quiet rooms which can be used for reading, discussions or visiting, and areas for television, radio, and ping pong should be provided in each living unit. *See* IJA/ABA, *Architecture, supra; but see* California Youth Authority, *Standards for Juvenile Halls, supra* at Standard 10. Approximately 5 acres of open space is recommended for outdoor recreation for a 100-bed facility. *See* IJA/ABA, *Architecture, supra; see also* Standard 4.218.

Statistics on the occupancy rates of training schools do not provide corresponding data on minimum square footage per occupant, therefore, information regarding the level of overcrowding is somewhat suspect. Hopefully, a by-product of implementing the standard will be increased knowledge of current practices and the impact of the living unit size on juveniles.

Related Standards

3.111	Jurisdiction Over Delinquency
3.181	Duration of Disposition and Type of Sanction—Delinquency
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
4.11	Role of the State
4.21	Training Schools
4.2111	Training Schools—Location
4.2121	Staff Size
4.213	Services
4.2191	High Security Units—Size
4.221	Camps and Ranches—Size
4.231	Group Homes—Size
4.251	Foster Homes—Staff
4.261	Detention Facilities—Size
4.27	Shelter Care Facilities
4.53	Discipline—Loss of Privileges

4.2113 Co-educational Program

Training schools should make provision for and be co-educational in nature.

Source:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile and Delinquency Prevention,* Standard 24.1 [hereinafter cited as *Report of the Task Force*].

Commentary

The standard recommends that training schools be co-educational institutions. Data from the most recent census of Juvenile Detention and Correctional Facilities indicate that this recommendation represents a major departure from current practice. The provision is based on the view that heterosexual experiences are necessary to the normal development of a youth whether that youth is "on the streets" or being held in a secure facility. In line with this thinking, both the *Report of the Task Force, supra* at Standard 24.1, and the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.5 (tentative draft, 1977) urge that all secure facilities be co-educational. *See also* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* §§8.3 and 11.6 (1973).

The standard is not intended to require an increase in the number of girls placed in training school type facilities or to imply that individual living units house both boys and girls. It does propose, however, that the use of separate facilities should be discontinued and that educational, vocational programs—and, when appropriate, counseling and recreation programs—within a training school include residents of both sexes.

While it is recognized that there are some inherent problems in making training schools co-educational—e.g., an increase in the number of pregnancies and veneral disease among residents—they are clearly outweighted by the benefits derived from providing a more normal environment, increasing the vocational offerings available—especially for female residents—and reducing the amount of homosexual activity. Moreover, it should be noted that these problems in the community, as well as in co-educational correctional facilities, can be minimized through the provision of health education programs and proper medical care in conjunction with the services called for in Standards 4.216-4.2174.

Related Standards

4.219	High Security Units—Size and Population
4.231	Group Homes—Size and Population
4.25	Foster Homes
4.261	Detention Facilities—Size and Population
4.27	Shelter Care Facilities

4.212 Staff

4.2121 Staff Size

Training schools should have the appropriate staff necessary to provide for the care, treatment and supervision of the juveniles placed therein.

At a minimum, training schools should maintain the following treatment staff-to-youth ratios:

- **a. One (1) psychiatrist for at least 20 hours a week per 100 juveniles;**
- **b. One (1) psychologist per 100 juveniles;**
- **c. One (1) associate psychologist per 50 juveniles;**
- **d. One (1) caseworker per 20 juveniles;**
- **e. One (1) youth-care worker on duty per 10 juveniles during waking hours;**
- **f. One (1) youth-care worker on duty per 20 juveniles during normal sleeping periods;**
- **g. One (1) educational diagnostician per 100 juveniles;**
- **h. One (1) diagnostic classroom teacher for every 8 juveniles in need of special education;**
- **i. One (1) teacher per 12 juveniles;**
- **j. One (1) vocational counselor per 100 juveniles; and**
- **k. One (1) academic counselor per 100 juveniles.**

In addition, a registered nurse should be in attendance on a 24-hour, seven-day-per-week basis, and a medical doctor and dentist should be available on staff or on call at all times.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* 702 and 715 (1976) [hereinafter cited as *Report of the Task Force*]. *Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974), and Relief Plan submitted by plaintiff and counsel for *amici* in *Morales v. Turman,* at *et.seq.*

Commentary

The standard recommends minimum staff-youth ratios for all treatment services that should be available to juveniles confined in a training school. *See* Standards 4.213-4.218. Due to the restrictive nature of this type of placement and the special security and treatment needs of this population, many of the services ordinarily available in the community must be provided by the training school. *See* Standard 4.213.

In a series of decisions, the state and federal courts have held that the treatment aspects of juvenile confinement, required by state statute or constitutionally, must have some foundation in fact. It is insufficient for a legislature to declare a rehabilitative pupose if the staff and other resources available in juvenile correction facilities are so insufficient that the consequence is a penal setting. For statutory bases, *see, e.g., Sas v. Maryland,* 344 F. 2d 506 (4th Cir. 1964); *In re Elmore,* 127 U.S. App D.C. 382 F. 2d 125 (1967); *Creek v. Stone,* 126 U.S. App. D.C. 329, 379 F. 2d 106 (1967); for constitutional bases, *see, e.g., Martarella v. Kelly,* 349 F. Supp. 575 (S.D.N.Y., 1972); *Morales, supra; Nelson v. Heyne,* 491 F.2d 352 (7th Cir. 1974); *but cf. Donaldson v. O'Connor,* 422 U.S. 563 (1975). In the *Morales* case, the court addressed the issue of incarcerated juveniles' right to treatment as an extension of due process. *See* Standard 3.310; *but see Donaldson,* and *Morales,* 562 F.2d 993 (1977). The court also recognized the need to protect juveniles from cruel and unusual punishment resulting from institutional neglect and/or abuse. Based on the testimony of expert witnesses and the relief plans submitted by the parties and *amici curiae,* guidelines were issued regarding the kinds and quality of services and staff that should be available in training schools. While differences exist among authorities as to what constitutes "minimally acceptable professional standards," current statistics on staffing patterns in training schools demonstrates obvious deficiencies in certain treatment areas. *See Children in Custody: An Advance Report on the Juvenile Detention and Correctional Facility Census of 1971* (1974). For example, the 1971 census reports the following ratios of staff-to-juvenile in training schools: psychiatrists, 1:3,593; psychologists, 1:266; and social workers (counselors) 1:37. The net effect of the standard would be a reduction in the overall ratio of staff-to-youth to approximately 1 to 1, resulting primarily from an influx of specialized treatment staff.

Current state standards on juvenile justice, with few exceptions, contain vague statements about rehabilitation of juveniles rather than specific staffing patterns on ratios. While many state standards advocate greater utilization of community-based facilities, *see* Standards 4.23-4.25, and 4.27, none recommended complete abandonment of the training school concept. *But see* L. Ohlin, A. Miller, and R. Coates, *Juvenile Reform in Massachusetts* (1977). There is a danger that a partial transition—e.g., opening a few community-based facilities—will be used as a justification to warehouse juveniles in training schools with few treatment programs until they are "ready" for the community programs. Therefore, while the National Advisory Committee encourages the use of alternatives to training schools whenever possible, it strongly urges the adoption of the standard to insure that those training schools which do remain in existence have adequate staff resources to provide necessary treatment services.

Paragraph (a) sets forth the minimum level of staffing required to provide essential psychiatric services. *See Morales,* 383 F. Supp. at 102. While the psychiatrist will be available to provide individual or group therapy, he/she should serve primarily as a resource coordinator and staff consultant in the areas of diagnosis and assessment, treatment intervention, and inservice training and staff development. *Id.; see* Standards 4.2122, 4.215, 4.214, and 4.2174.

The services of the part-time psychiatrist should be supplemented by the pscychologists and assistant psychologists included on the training school staff. The chief psychologist will be primarily responsible for providing individual and group therapy, and supervising the activities of the associate psychologists. He/she will serve on the assessment team and other committees which require professional judgments in determining a juvenile's treatment plan. He/she will also work closely with the educational diagnostician and caseworkers and provide inservice training sessions for other staff members.

Under the supervision of the chief psychologist, the two (2) associate psychologists called for in paragraph (c) would administer a battery of selected psychological tests to juveniles upon admission. *See Morales,* 383 F. Supp. at 88; Standards 4.2122, 4.2141, and 4.2142. They will aid in the analysis of the results and participate in the assessment process. Whenever appropriate, the associate psychologists will participate in the implementation of the treatment plan.

Since each living unit is designed to emphasize a particular treatment approach, the caseworker who is assigned to that unit should act as a group leader in maintaining a living climate consistent with that approach. *See Report of the Task Force, supra; Morales,* 383 F. Supp. at 111; and Standard 4.2152. In addition to providing special guidance and individual counseling, caseworkers should act as the liaison between the juvenile and other treatment agents, including instructors, psychiatrist and psychologists, and as the supervisor of child-care staff. They should coordinate various schedules and activities, provide relevant feedback to appropriate staff on a juvenile's specific behavior problems or accomplishments; maintain professional records; and make recommendations for modification of a juvenile's treatment plan whenever necessary.

Paragraphs (e) and (f) provide that, except for the sleeping period, there should never be fewer than two child-care workers on duty at any given time. *See Report of the Task Force, supra.* The ratios recommended would enable child-care staff and juveniles in a living unit to become familiar with each other so that mutual respect and trust can be developed. The child-care workers are responsible for supervising the day-to-day living activities in a firm, but supportive manner. As an integral part of the treatment model, child-care staff play a major role in maintaining a consistent treatment approach for their living unit by monitoring youths' behavior patterns and providing immediate assistance or intervention when necessary and relaying significant information to appropriate staff. It is important that the juveniles know what is expected of them and that they and the staff will be held accountable for their behavior.

The educational diagnostician and diagnostic classroom teachers called for in paragraphs (g) and (h) are to serve the special needs of juveniles with certain developmental disabilities that have affected their ability to learn in the traditional classroom using conventional teaching methods. *See Report of the Task Force, supra* at Standard 24.9; *Morales,* 383 F. Supp. at 90; Relief Plan, *supra* at 6; and Standards 4.216, 4.2161, and 4.2163. The chief diagnostician should conduct the initial screening of all newly admitted juveniles. This should consist of a battery of appropriate I.Q. tests, *see Morales,* 383 F. Supp. at 56, and standard grade-level achievement tests. If the initial results warrant further screening for specific disabilities, the diagnostician and the diagnostic classroom teacher should collaborate in the assessment and development of preliminary strategies for specific remediation. The youth's special educational program should be coordinated with other components of his/her treatment plan. *See* Standards 4.2141 and 4.2142. When the student's problems are minimal, and when certain teaching techniques can be incorporated into the regular academic or vocational instruction, the diagnostic teacher should work with the instructor. The chief diagnostician should deliver periodic inservice training seminars for the entire staff and provide special consultation to staff when remediation requires consistent behavior monitoring across all treatment programs.

Because of the need for intensive individual instruction, the size for special education classes should be no more than eight students. The number of diagnostic class teachers will depend on the results of the screening process. Current estimates on the percent of incarcerated juveniles who are affected vary depending on the definitions employed. *See* C. A. Murray, *The Link Between Learning Disabilities and Juvenile Delinquency,* 56, *et.seq.* (1977). However, employing the most conservative estimate of 22 percent, *id.,* would require at least three diagnostic classroom teachers per training school. In addition, the diagnostic teacher should have access to appropriate remedial instructional materials including audio-visual machines. The educational diagnostician should also supply test results and recommendations to the assessment team for student placement in regular vocational and academic classes.

Because the age and academic abilities of juveniles are varied and cover a wide range, the teachers referred to in paragraph (i) should be assigned on a different basis. *See Report of the Task Force, supra* at Standards 24.9, 4.2161, and 4.2162; *Morales,* 383 F. Supp. at 90. Their training and personal strengths should be matched as nearly as possible to the needs of the individual students to take full advantage of the teacher's special knowledge and skills in relationship to the subject matter and ages of the juveniles. While the overall ratio is one teacher per twelve juveniles, the class sizes and the distribution of the kinds of instructors, (elementary, junior high, and high school) will depend on the ages and abilities of the students. However, at least three of the teachers should be vocational instructors. Academic and vocational curricula should be designed to complement each other wherever possible. In addition, at least two of the teachers should be qualified reading specialists, one of which should have training in speech or language pathology. Where a substantial proportion of the training school does not speak or understand English, a bilingual educational program should be established. *See* Morales, 383 F. Supp. at 90.

The vocational and academic counselors mentioned in paragraphs (j) and (k) will provide special counseling and guidance for juveniles selecting institutional academic and vocational programs or when they are experiencing difficulty in the classroom. *See Report of the Task Force, supra* at Standard 24.9; *Morales,* 383 F. Supp. at 91; and Standard 4.216. The academic counselors should also coordinate the assignments of volunteer tutors to students needing further assistance; facilitate the transfer of juveniles back to their home and school programs before they are released; and arrange for high school equivalency or other standard achievement placement exams. *See* Standard 4.2161. The vocational counselor should also be responsible for helping the juvenile develop a pre-employment plan, *see* Standard 4.2162, which may include further vocational instruction upon release to the community, or an actual job placement.

The last paragraph addresses the need to provide adequate medical and dental care for juveniles in training schools. *See Report of the Task Force, supra* at Standard 24.10; *Morales,* 383 F. Supp. at 105; and Standard 2.17. A registered nurse is needed around the clock in the event of a medical emergency, for dispensing prescribed medication, for assisting in initial health examinations, *see* Standard 4.2171, and for providing care to those who are sick. There should be an infirmary in the training school which contains sufficient medical and dental supplies and equipment to provide the basic care called for in Standard 4.2174. Arrangement should be made with area hospitals to provide immediate ambulance service and emergency hospitalization. The nurse should be responsible for maintaining accurate confidential health and dental records on each juvenile, and also for controlling the supply and security of all drugs and medical and dental instruments.

The dentist may be on the staff or on contract. He/she should be responsible for providing an initial and regular six-month dental examinations, diagnosis, and treatment of dental problems which can be safely performed with the available equipment. Cases which require oral surgery should be referred to a local clinic or hospital. *See* Standard 4.217. A medical doctor should conduct the initial physical examination and health assessment described in Standard 4.2171, and supervise subsequent treatment required in order to restore the juvenile to good health. Only the medical doctor and psychiatrist should have the authority to prescribe drugs for medical or therapeutic purposes. *But see* Standard 4.62. In general, the medical doctor should have the responsibility for assuring that all medical needs are being met, either in the training school or through other community medical facilities.

Related Standards

1.41	Personnel Selection
1.425	Personnel Providing Direct Services to Juveniles
1.426	Educational Personnel
3.182	Criteria for Dispositional Decisions—Delinquency
4.11	Role of the State
4.21	Training Schools
4.2112	Training Schools—Size
4.2122	Staff Qualifications
4.213	Training School—Services
4.2141	Training School—Assessment
4.2142	Treatment Plan
4.215	Group Counseling and Treatment Services
4.2151	Group Therapy
4.2152	Semi-Autonomous Treatment Model
4.216	Educational Services
4.2161	Academic Education
4.2162	Vocational Education
4.2163	Special Education
4.217	Health and Mental Health Services
4.2171	Initial Health Examination and Assessment
4.2172	Responsibility Toward Patients
4.2174	Mental Health Services
4.2192	High Security Units—Staff
4.2193	High Security Units—Services
4.222	Camps and Ranches—Staff
4.223	Camps and Ranches—Services
4.232	Group Homes—Staff
4.233	Group Homes—Services
4.251	Foster Homes—Staff
4.252	Foster Homes—Services

4.2122 Staff Qualifications

Each state should develop rules and regulations setting forth the qualifications for the positions necessary to provide care, treatment, and supervision of juveniles placed in training schools. At a minimum, these rules and regulations should require that:

a. ACADEMIC COUNSELOR
Persons employed as academic counselors should be licensed or certified pursuant to the law of the jurisdiction to teach in public schools and should have experience in teaching children;

b. ASSOCIATE PSYCHOLOGIST
Persons employed as associate psychologists should be licensed or certified as an associate psychologist under the law of the jurisdiction;

c. CASEWORKER
Person's employed as caseworkers should, in earning a bachelor's degree, have taken courses in social work, psychology or the behavior sciences, and should, in addition, have had at least one year of full-time paid employment experience working with adolescents;

d. CHILD-CARE WORKER
Persons employed as child-care workers should have a high school degree or its equivalent and at least one year of full-time paid experience in working with adolescents in institutions or in the community;

e. DENTIST
Persons employed as dentists should be licensed to practice dentistry in the jurisdiction;

f. DIAGNOSTIC CLASSROOM TEACHER
Persons employed as diagnostic classroom teachers should be certified as special education instructors under the law of the jurisdiction and have experience in diagnosing and providing specialized remedial instruction to juveniles who are educationally disadvantaged;

g. EDUCATIONAL DIAGNOSTICIAN
Persons employed as educational diagnosticians should have earned a master's degree in special education and have taken graduate-level courses on formal and informal assessment techniques;

h. DIETICIAN
Persons employed as dieticians should be licensed or certified under the law of the jurisdiction, and have had special training pertaining to allergic reactions, hyperactivity, and other reactions of susceptible youths to particular food substances;

i. MEDICAL DOCTOR
Persons employed as medical doctors should be physicians licensed to practice in the jurisdiction;

j. NURSE
Persons employed as nurses should be licensed to practice as registered nurses under the law of the jurisdiction;

k. PSYCHIATRIST
Persons employed as psychiatrists should be physicians licensed under the law of the jurisdiction who have successfully completed the requirements of a full-time, supervised, and accredited psychiatric residency in an accredited psychiatric program, plus six months full-time work with children or adolescents whether during such residency or during any two-year period thereafter;

l. PSYCHOLOGIST
An individual who is licensed or certified to practice psychology under the law of jurisdiction;

m. TEACHERS
Persons employed as teachers should be certified under the law of the jurisdiction to teach in public schools the subject areas they are responsible for in the training school;

n. VOCATIONAL COUNSELOR
Persons employed as vocational counselors should be licensed or certified under the law of the jurisdiction to teach in public schools and should have experience in teaching children and in job development.

Source:

Morales v. Turman, 383 F. Supp. 53, 55-58 (E.D. Tex. 1974); and Relief Plans submitted by plaintiff and counsel in *Morales v. Turman* and *amici curiae* at 5-8.

Commentary

This standard seeks to assure that the members of the training school staff designated in Standard 4.2121 are duly qualified to perform their respective jobs. It recommends minimally acceptable criteria for determining the basic entrance level requirements for each position. Since qualifications for certain positions not covered by existing licensing or certification requirements vary among local jurisdictions, the standard urges that states develop guidelines regarding the minimum educational and employment experience of persons hired to fill those positions to promote consistency and provide greater objectivity and impartiality in the selection procedure. *See* Standard 1.41; *Morales;* and *Morales Relief Plan, supra* at 5 *et.seq.* The guidelines for training school staff should be at least comparable to the requirements for the same position in other settings—i.e., a teacher or a diagnostician in a training school should meet no lesser requirements than teachers employed in the state's public schools. Indeed, because of the troubled nature of many of the youth with whom the training school staff will be dealing, states should consider whether the minimum qualifications should include additional experience or a demonstrated ability to work with troubled youth. At the very least, juveniles placed in training schools should not be deprived of the quality of services normally provided in a less restrictive environment. *See Morales,* 383 F. Supp. at 50 *et.seq;* Institute of Administration/American Bar Association Joint Commission on Juvenile Justice Standard, *Standards Relating to Corrections Administration,* Standard 17.11 (E) (tentative draft, 1977); and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 14.20 (1976).

The basic qualifications recommended for each position enumerated in the standard are based on recommendations made in the *Morales Relief Plan, supra,* and on the respective duties and responsibilities briefly outlined in Standard 4.2121. A more complete description of the duties to be performed by training school staff can be found in the standards on the particular services that should be available. *See* Standards 4.214-4.218.

The specifications of this provision are somewhat less stringent than the requirements of the *Morales Relief Plan, supra,* in order to allow competent persons, who may have less formal training but more experience, to serve on the treatment staff, and to encourage development of career ladders.

In addition to the specific professional requirements, there are some general qualifications which staff should meet. All employees providing direct services in the training school, whether employees of the facility or under contract service, *see* Standard 4.213, should be physically able to perform the tasks specifically required by their job. Fitness should be determined by a physical examination or review of medical records. In addition, the employees should demonstrate their suitability for working with juveniles. *See* Standard 1.41. Those with a prior criminal history should not be automatically excluded from consideration, but should be carefully screened and selected if it is felt that they can make a positive contribution to the training school treatment program.

The guidelines should allow a reasonable amount of time for current employees to meet the minimum certification requirements if they are not so qualified. Both for these employees, and in order to maintain and improve the quality of staff in general, the training school or supervisory agency should conduct periodic performance reviews and encourage staff development through training. An internal performance rating should be undertaken at least annually to document exceptionally good or poor performance and to take appropriate action within prescribed personnel guidelines. *See Morales Relief Plan, supra* at 9. For those professions which require recertification or periodic renewal of licenses, the recertification or renewal criteria should serve as minimal guidelines for performance review. Development of state guidelines should provide that written specifications of the skills required in the position, and procedures to measure job performance should be given to each employee at the time he/she is hired and whenever the job description is modified.

Preservice and inservice training should be provided to keep staff informed of significant developments in the field of juvenile justice and other developments related specifically to their job. *See* Standard 1.425, 1.426, 1.427 and 4.2121. Staff development should be encouraged by granting limited administrative leave for staff to attend relevant courses at colleges, universities, or other appropriate training centers. Staff development should be an integral part of the merit promotion system, and adequate guidance should be provided to those interested in career advancement within the training school. When the racial and ethnic composition of the training school staff differs substantially from the racial and ethnic composition of the residents, a concerted effort should be made to recruit minority applicants to fill vacancies. *See* Standard 1.41. In order to recruit minorities and to encourage upward mobility, specific job qualifications and the means to obtain them should be made explicit through publicized job announcements, staff development seminars and free access to appropriate personnel manuals. Notices of training opportunities should also receive wide circulation, well in advance of registration deadlines. It is important for staff morale that those opportunities be made available and that they be administered fairly.

Related Standards

1.41	Personnel Selection
1.425	Personnel Providing Direct Services to Juveniles
1.426	Educational Personnel
3.182	Criteria for Dispositional Decisions—Delinquency
4.11	Role of the State
4.21	Training Schools
4.2121	Training Schools—Staff Size
4.213	Training Schools—Services
4.2141	Training School—Assessment
4.2142	Treatment Plan
4.215	Group Counseling and Treatment Services
4.2151	Group Therapy
4.2152	Semi-Autonomous Treatment Model
4.216	Educational Services
4.2161	Academic Education
4.2162	Vocational Education
4.2163	Special Education
4.217	Health and Mental Health Services
4.2171	Initial Health Examination and Assessment
4.2172	Responsibility Toward Patients
4.2174	Mental Health Services
4.2192	High Security Units—Staff
4.2193	High Security Units—Services

4.222 Camps and Ranches—Staff
4.223 Camps and Ranches—Services
4.232 Group Homes—Staff
4.233 Group Homes—Services
4.251 Foster Homes—Staff
4.252 Foster Homes—Services

4.213 Services

At a minimum, juveniles placed in training schools should have access to the services described in Standards 4.214-4.218. When location and security permit, arrangements should be made for appropriate residents to receive these services in the community.

Sources:

See generally Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974); *Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind. 1972); *Inmates v. Affleck,* 346 F. Supp. 1354 (D.R. I. 1972); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 24.5-24.12, and 24.15-24.16 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

A number of courts, statutes, and standards-setting groups have indicated that placement of a juvenile in a training school imposes a duty upon the state to provide services which will facilitate the youth's reintegration into the home community. These services include the basic educational, medical, and dental programs which should be available to all juveniles, as well as specialized programs addressing the needs and problems of youths adjudicated delinquent and placed in a training school. This standard urges that a full range of services be available to juveniles placed in a training school either on an in-house basis or from community resources. *See Report of the Task Force, supra* at Standard 24.5-24.12. Other standards in the training school series discuss in more detail the nature and content of those diagnostic, counseling, educational, medical, mental health, and recreational programs. To a great extent, these provisions adopt the minimun requirements regarding staff, content, and availability set forth in the leading cases. *See, e.g., Morales; Nelson; Inmates.* An indepth discussion of a juvenile's right to treatment as it relates to training school placements and all other dispositional alternatives, appears in the Commentary to Standard 4.410.

The recommendation that services be obtained from the community whenever possible, is based on the need to reduce costs and avoid unnecessary duplication of efforts. However, it is not intended to imply that all juveniles placed in a training school should routinely participate in out-of-facility programs. It is recognized that under the dispositional criteria set forth in Standard 3.182, only those juveniles for whom no less restrictive placement would be appropriate should be placed in a training school. Hence, it may be inappropriate to send youths into the community until they have demonstrated a willingness to abide by the law and refrain from grossly disruptive behavior.

In order to fully utilize community resources, training schools—in conjunction with other community agencies—should develop work-release or study-release furlough programs. *See Report of the Task Force, supra* at Standard 24.14; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.11 (D) and (G) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Corrections Administration*]; National Advisory Commission on Criminal Justice Standards and Goals, *Corrections,* 237 (1973). The development should include a process for screening candidates for particular furlough programs, as well as procedures for carefully monitoring program participation. A security classification system, along with the specific program's requirements for participation, and the juvenile's institutional program plan should be used to determine an individual's eligibility. *See* IJA/ABA, *Corrections Administration, supra;* and Standards 4.214.

The security classification should be based primarily on behavioral rather than attitudinal factors. Relevant behavioral criteria may include the number and seriousness of disciplinary dispositions within a specified period of time; the individual's progress in training school programs; the juvenile's past or current performance in a furlough program; any history of escape or violence; and the juvenile's expected release date. *See Corrections, supra* at 244; *Report of the Task Force, supra* at Standard 24.3. However, the extent to which the juvenile participates in services should not be a criteria for security classification. *See* IJA/ABA, *Corrections Administration, supra* at Standard 7.11(C).

A furlough program may be designed to minimize the juvenile's separation from the community by allowing daily attendence at local schools or training programs, participation in counseling programs, or family visits whereby the youth returns to sleep at the training school. As they demonstrate their responsibility, they may be allowed overnight furloughs home. Other furlough programs may be designed to ease the transition from the training school environment to the free community. The IJA/ABA Joint Commission further recommends that, in addition to work and education furloughs for those in acceptable security category, all juveniles regardless of their classification should be permitted a furlough of at least five days duration during the month prior to discharge *See* IJA/ABA, *Corrections Administration, supra* at Standard 7.11 (g); *see also* Americal Correctional Association, *Manual of Correctional Standards,* 127 (1966); and Wisconsin Council on Criminal Justice, *Juvenile Justice Standards and Goals,* Standard 15.5 (i) (1975).

Whenever appropriate, other public and private agencies should be utilized to provide in-house services. *See* IJA/ABA, *Corrections Administration, supra* at Standard 2.5. Major considerations involved in selecting particular contract services would be the degree to which institutional security and continuity of services, both within the institution and between training school and the community can be provided; that the degree to which the group has access to other community resources such as job referrals or extended training programs; and that the same quality of services cannot be provided by qualified institutional staff at a lower cost.

The services described in the following standards should, whenever possible, be augmented by special programs offered by state, and federal agencies designed to help solve specific problems through technical assistance or specialized training programs. *See* Standards 1.124-1.133, and 1.425. It should also be the responsibility of the state agency to evaluate the quality of the services being provided in the training schools. *See* Standard 1.114.

In addition, the services of local volunteer groups should be recruited to supplement staff efforts and provide additional services such as religious services, additional tutoring, and counseling to juveniles in the training school. *See* IJA/ABA, *Corrections Administration, supra* at Standard 3.6; Standard 4.2121; *Report of the Task Force, supra* at Standard 19.11; *Corrections, supra* at 480-481.

Related Standards

1.114 Evaluation and Modification of Local Juvenile Service System Program Efforts
1.124 Provision of Financial and Technical Resources
1.133 Distribution of Financial and Technical Resources
1.425 Personnel Providing Direct Services to Juveniles
3.182 Criteria for Dispositional Decision—Delinquency
4.11 Administrative Responsibility—Role of the State
4.21 Training Schools
4.2121 Training Schools—Staff Size
4.2122 Training Schools—Staff Qualification
4.214 Development and Implementation of an Individual Program Plan
4.215 Group Counseling and Treatment Services
4.2161 Training Schools—Educational Services
4.2163 Special Education
4.217 Health and Mental Health Services
4.218 Recreational Services
4.219 High Security Units—Services
4.223 Camps and Ranches—Services
4.233 Group Homes—Services
4.252 Foster Homes—Services
4.263 Detention Facilities—Services
4.32 Nonresidential Programs—Services
4.49 Work Assignments
4.410 Right to Treatment
4.53 Loss of Privileges
4.54 Disciplinary Procedures

4.214 Development and Implementation of an Individual Program Plan

Within fifteen days of a juvenile's admission to a training school, a comprehensive assessment report should be completed. This report should provide an evaluation of the juvenile's specific problems, deficiencies, and resources, and contain the individual's program plan.

An assessment team, composed of a caseworker, a youth-care worker, an educational diagnostician, a psychiatrist and a psychologist, should perform the assessment.

The assessment should include: family history, developmental history, physical examinations, psychological testing, psychiatric interviews, community evaluation, language and educational analyses, and information concerning the nature and circumstances of the conduct on which the adjudication is based. It should be the responsibility of the family court to ensure that any of the above material in its possession is forwarded to the training school.

After all assessment team members have completed their respective tasks, they should meet together to discuss the findings and finalize their recommendation for the juvenile's program plan. At such meetings, and throughout the assessment process, the juvenile should be given full opportunity to participate in the formulation of the program plan and to have a voice in determining his/her program goals.

The juvenile should be given a copy of the program plan; a copy should be maintained in the juvenile's institutional file; and a copy should be forwarded to the placing family court.

The plan should be reviewed monthly by appropriate staff including members of the assessment team and other members of the treatment staff with knowledge of the juvenile's progress under the plan. Any change in the plan should be noted in the juvenile's file and notification of the significant modifications forwarded to the placing family court.

Sources:

See generally Morales v. Turman, 383 F. Supp. 53, 88, 92-93 (E.D. Tex. 1974); Relief Plan submitted by plaintiff and counsel for *amici* in *Morales v. Turman,* at 12 *et.seq.; Morgan v. Sproat,* 432 F. Supp. 1130 (S.D. Miss. 1977); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 23.3 and 24.6 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

The standard urges that a comprehensive assessment of juveniles placed in a training school be conducted immediately upon their admission in order to determine how the programs and resources available through the facility can most effectively meet each juvenile's needs during the period of placement. *See Report of the Task Force, supra* at Standard 23.3; *Morales* 383 F. Supp. at 88, 92-93. If the ideal of an individualized program is to be realized, obtaining information regarding a juvenile's educational, medical, psychological, and vocational needs and preferences appears essential.

Given the scope of the assessment and the urgency of involving juveniles in constructive programs, the standard urges that the assessment process be completed within fifteen working days of the youth's arrival at the training school. *See Morales Relief Plan, supra* at 12. Unlike the assessment process outlined in the relief plan, the assessment described in the standard is distinct from the predisposition investigation which is a preliminary assessment solely to determine the appropriate disposition for the juvenile. *See* Standard 3.186. This distinction is made in order to confine the scope of the predisposition report to only that information essential for making a dispositional decision. All adjudicated juveniles may not require the mental health and educational evaluations called for in this standard. Those who do should receive them. However, to require such evaluations for all adjudicated juveniles at the predispositional stage would not only impose a sizable financial burden on the state or community, but also constitute an unnecessary invasion of individual privacy. *See* Standard 3.187.

In order to avoid unnecessary duplication of the predisposition investigation by the assessment team, the placing court should be responsible for promptly forwarding predispositional reports and any other pertinent information to the training school for use in the assessment.

The assessment should be used in determining the appropriate housing placement and security classification as well as in developing the individual's program plan. It should also serve as a basis for measuring the juvenile's progress in specific areas of concern. The objectives of the program plan should be clearly stated and in keeping with the objective of the dispositional order.

The assessment team which is to conduct the assessment should be composed of representatives from all components of the treatment staff in order to get an overall perspective of the juvenile's needs, to identify problems, and to establish priorities and program options which complement each other. While the standard does not specify whether or not assignment to the assessment team is permanent, rotation of staff would allow counselors and youth-care staff to participate in making program decisions which they may later be responsible for implementing or monitoring.

The assessment procedures should be designed to allow the juvenile a brief period to adjust to the new setting before the more intensive phase of psychological, educational, and vocational testing commences. *See Morales Relief Plan, supra* at 15. During this phase, the juvenile should have an opportunity to meet each member of the assessment team in order to become more familiar with those who are conducting the assessment and aware of the services provided by each team member. The assessment team should encourage the juvenile to begin developing goals and objectives to be attained while at the training school. Physical and dental examinations should be conducted during this phase and any significant findings or recommendations for treatment should be presented by the examining physician or dentist to the assessment team.

The caseworker assigned to the assessment team should be responsible for reviewing any court papers relevant to the dispositional order, including a summary of the incident which resulted in adjudication, and any family or developmental history already compiled in the predisposition report for their completeness. In addition, the caseworker should interview the juvenile regarding these subjects. Based on the juvenile's personal history and his/her informal observations, as well as those of the youth-care worker, the caseworker should make recommendations regarding the juvenile's housing placement, security classification and program options. If a previous assessment has been conducted on a juvenile, the caseworker should update the last study to cover the period since the last assessment including information regarding the current placement.

With the assistance of the associate psychologist, the psychologist should perform a psychological evaluation which should include individually administered tests of verbal and nonverbal intelligence and psychomotor capacity; tests of social maturity and personality; projective tests, as appropriate; and vocational interest and aptitude tests. Tests selected for the psychological evaluation should meet the standards of the American Psychological Association. They should minimize, to the greatest extent possible, any racial, ethnic, or cultural bias which may affect the validity of the results. *See Morales*, 383 F. Supp. at 88. The psychologist should record the results of the tests administered, and whenever appropriate, communicate these results to the educational diagnostician and psychiatrist for incorportation into their assessment work.

On the basis of recommendations of other team members or the specifications of the dispositional orders, the psychiatrist should conduct a psychiatric evaluation in order to determine whether the juvenile is in need of psychiatric treatment. *See Morales Relief Plan, supra* at 28; *Morales*, 383 F. Supp. at 88; and Standard 4.2174. The psychiatrist should make recommendations as to what mental health services should be made available to the juvenile, and explain the services to the juvenile and to his/her parents, guardian, or primary caretaker.

An educational evaluation should be conducted by the educational diagnostician and should include an assessment of each juvenile's academic and vocational skill achievement level, level of cognitive development, and attitude toward education by means of testing and review of available educational records. *See* 45 C.F.R. §§99.31(a) (2) and *Report of the Task Force, supra,* at Standard 24.6. Professionally recognized standard achievement tests should be administered whenever records are not available on the results of tests administered within the previous twelve months. *See Morales Relief Plan, supra* at 27. Like the tests used for psychological evaluation, the educational achievement tests used should be as free of racial, ethnic, and cultural bias as possible. Whenever preliminary test results indicate the juvenile may have serious learning problems, the educational diagnostician should administer the appropriate diagnostic tests. Depending on the suspected dysfunction, the tests should identify specific problems in information processing including visual, auditory, or language processing; speech; and psychiatric or neurological disorders which may affect learning ability. The educational diagnostician should inform the assessment team of the juvenile's special needs as related to his/her educational and social functioning, including both strengths and weaknesses, and of any items which should be included in the short-term and long-term goals for the educational component of the program plan. The plan should contain strategies designed to accomplish each of these goals.

Wherever appropriate, the vocational counselor should assist the educational diagnositcian and psychologist in developing recommendations for vocational training programs to complement the juvenile's educational plan. The assessment team should consider the availability of and feasibility of using community resources to provide the full range of services called for in the program plan or to augment the services provided in the training school. *See* Standard 4.213.

The standard recommends that the entire assessment team meet at least once to review and discuss the findings of each member's analysis and to incorporate these into a workable program plan which addresses the needs and preferences of juveniles. One member of the assessment team should be responsible for preparing a final report on the team's findings, recommendations, and final agreement on the individual's program objectives and strategies. The standard urges that the juvenile actively participate in the development of goals and objectives which form the basis of the program plan as well as in the formulation of the plan itself. Hopefully, the result will be a plan which is realistic and to which the youth has some personal commitment. At a minimum, the juvenile should be present at one of the assessment team meetings.

Copies of the program plan should be given to the juvenile and the placing family court. Formalizing the plan has the advantage that all parties have a record of what is expected of each person or program unit involved. Also, if the juvenile feels he/she has been treated unfairly, it will serve as documentation for review by the ombudsman or through the grievance procedures. *See* Standards 4.81 and 4.82. Notification to the placing court is recommended as a means of assuring the judge that the juvenile's placement is in keeping with the conditions of the dispositional order and also of informing him/her of the availability and adequacy of the programs to address the juvenile's needs.

By defining specific objectives to be achieved and timetables for the implementation of the program plan, the training school staff will have some guidelines for reviewing an individual's progress and some measures of performance. A monthly review is recommended in order to keep appropriate staff, including members of the assessment team appraised of the youth's progress in other program areas and to provide formal feedback to the juvenile on how the staff perceives his/her progress. Based on this periodic review, the plan may be modified and any changes should be noted in the juvenile's institutional file. Only when significant modifications are agreed upon, such as transfer or release, should the court be notified. Proposed modifications in either the duration of confinement or the level or security are within the review of the family court and should be brought to the attention of the placing judge. *See* Standards 3.181, 3.182, 3.189, 3.1810, 4.71, and 4.72. To avoid undue anxiety on the part of the juvenile awaiting the results of judicial review and undue paperwork for the court, a maximum time limit should be set for the family court to respond to any such proposals. Setting such a time limit may require instituting a uniform court policy to ensure compliance or enactment of legislation. This review process should serve to insure both the safety of the community and the protection of juveniles from unduly extended periods of confinement.

Related Standards

1.533	Access to Intake, Detention, Emergency Custody, and Dispositional Records
3.186	Predisposition Investigation
3.187	Predisposition Report
3.189	Review and Modification of Dispositional Decisions
3.1810	Enforcement of Dispositional Orders—Delinquency
4.2121	Training School Staff—Size
4.2122	Training School Staff—Qualifications
4.213	Training School Services
4.215	Training Schools—Group Counseling and Treatment Services
4.2152	Training Schools—Semi-autonomous Treatment
4.2161-3	Training Schools—Educational Services
4.2171-4	Training Schools—Health and Mental Health Services
4.219	Training Schools—High Security Units
4.71	Transfers From Less Secure to More Secure Facilities
4.72	Transfers From More Secure to Less Secure Facilities
4.81	Grievance Procedures
4.82	Ombudsman Program

4.215 Individual and Group Counseling Programs

Training schools should provide a broad range of individual and group counseling programs with emphasis upon positive reinforcement and strict limits on negative reinforcement.

Source:

See generally Morales v. Turman, 383 F. Supp. 53, 93 (E.D.Tex. 1974); Vera Institute of Justice, *Violent Delinquents: A Report and Recommendation to the Ford Foundation,* 196 *et.seq.* (1976) [hereinafter cited as *Violent Delinquents*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Standards and Goals for Juvenile Justice and Delinquency Prevention,* Standard 24.11 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

In addition to other services which should be provided for juveniles in training schools, a wide variety of counseling programs should be available. These programs may range from those providing a highly specialized service such as individual psychotherapy, to those providing a specific structural context for interaction among residents and staff, such as guided group interaction, or a token economy. Each approach along this continuum will reflect a different perspective in terms of:

a) the context in which the counseling is provided—one-to-one counseling, or a peer group or family setting;
b) the particular problems or needs to be addressed—behavioral, emotional, perceptual, or management;
c) the immediacy of the needs or problems—crisis intervention, short-term to long-term counseling;
d) the assumptions about the causes of those problems—internal or environmental;
e) the specific kinds of changes which the counseling attempts to bring about—perceptual or behavioral;
f) the degree to which the individual is viewed as being capable of directing that change—the type and degree of interaction between the individual and the therapist, counselor, or other participants;
g) the relationship between the expected changes and future involvement in deviant or delinquent behavior; and
h) the levels of education training, experience, and degree of professional autonomy of those providing or supervising the counseling. *See* Standard 4.2151.

It is widely recognized that no one approach or combination of approaches has been demonstrated to be universally effective in dealing with delinquency. There is evidence, however, that fitting the type of services to the characteristics and needs of the individual is beneficial from both an individual and institutional standpoint. *See* R. Gerard, "Classification by Behavioral Categories and Its Implications for Differential Treatment" and M. Grant, "Interaction Between Kinds of Treatment and Kinds of Delinquents," *Correctional Classification and Treatment,* 94-103 and 84-93 (1975). Therefore, it is recommended that an eclectic approach to an individual's problems—one which may employ a number of different methodologies—should be sought. *See* D. Mann, *Intervening with Convicted Serious Juvenile Offenders,* 21-22 (1977).

A wide variety of group techniques for correcting antisocial behavior have come into general use in recent years because of the scarcity of trained professionals to conduct one-on-one therapy and the high cost of such treatment. Also, an important consideration in the use of group techniques for juveniles adjudicated delinquent has been studies concluding that peer relationships tend to be a more significant factor in delinquent behavior than their relationships with adult and authority figures. *See Violent Delinquents, supra* at 196, footnote 11. Group techniques such as Guided Group Interaction, Milieu therapy, transactional analysis and token economies utilize peer group interaction, and have demonstrated some measure of success with incarcerated juveniles. *See* D. Lipton, R. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment,* 223-268 (1975).

The assessment process described in Standard 4.214 is designed to determine whether a juvenile is in need of special counseling services and to develop a comprehensive program plan. Once the juvenile's needs have been assessed and the program outlined, the juvenile would be assigned to the living unit which "specializes" in the particular approach which has been determined to be suited to the youth's needs. *See* Standards 4.214 and 4.217. The specialization is enhanced by the fact that living units are designed to be semi-autonomous, each having a responsibility to plan a program which reflects the characteristics and needs of its residents and the training and orientation of the staff. In implementing one or more of these particular approaches, care should be taken to assure that the selected counseling approaches are administered consistently so as not to confuse or place unnecessarily conflicting demands on the youth. As noted in Standard 4.214, the juvenile should have the opportunity to be fully involved in the assessment process.

Effective provision of these kinds of services should fulfill a number of complementary functions for individuals as well as the facility. For example, the availability of noncoercive counseling services and specialized living units may help reduce some of the individual's tensions and anxieties associated with incarceration and possibly reduce the level of tension in the institution in general. Milieu therapy, for instance, actively involves juveniles in finding reasonable solutions to common problems, thus channeling these tensions and anxieties to constructive ends. *See* Lipton, Martinson, and Wilks, *supra* at 324. Furthermore, since resocialization, rather than institutional adjustment, should be the primary focus of counseling approaches, the tendency for juveniles to become dependent on the institution may be diminished. Whenever it is appropriate and possible, the juvenile's family should be involved in the juvenile's counseling program. *See* Standard 4.2174.

It is expected that all staff members will engage in at least some informal counseling with juveniles. Hence, they should be adequately trained to handle different situations effectively. *See* Commentary to Standard 4.2121, and Standard 1.425. However, the more formal counseling programs of individuals or group therapy should be offered on a voluntary basis only, *see Report of the Task Force, supra* at Standard 24.11, and should be accompanied by certain safeguards in order to insure quality services. These include minimum qualification for staff, *see* Standard 4.2151, and strict limits on the use of negative reinforcement.

Behavior modification, in particular, has come under criticism due to the use, in a few cases, of extreme negative reinforcements involving sensory deprivation and physical pain. The danger of harmful effects from certain techniques requires strict controls on the use of behavior modification. Emphasis should be on positive reinforcements such as token economics, increased privileges, etc. Denial of privileges such as movies or field trips should not be precluded. However, safeguards should be instituted which prohibit the following types of negative reinforcement: corporal punishment, long-term detention, deprivation of food or other necessities, or denial of the rights enumerated in Standards 4.41-4.11. *See also* Standards 4.51-4.54, 4.61, and 4.62.

Similar precautions should be taken in administering group programs in which peer pressure and group sanctions for behavior are a component of the group's operation. This would include limiting the range of sanctions available to the group to impose on other group members. Group processes should be subject to periodic review, and open to investigation if abuses by staff or group members are suspected.

Related Standards

1.425	Personnel Providing Direct Services to Juveniles
4.2121	Training Schools—Staff Size
4.2122	Training Schools—Staff Qualifications
4.213	Training Schools—Services
4.214	Training Schools—Development and Implementation of an Individual Program Plan
4.2151	Training Schools—Group therapy
4.2152	Training Schools—Semi-Autonomous Treatment Model
4.2174	Training Schools—Mental Health Services
4.223	Camps and Ranches—Services
4.233	Group Homes—Services
4.41-4.411	Rights of Juveniles
4.51	Corporal Punishment
4.52	Confinement
4.53	Loss of Privileges
4.54	Disciplinary Procedures
4.61	Mechanical Restraints
4.62	Medical Restraints

4.2151 Group Therapy

Group therapy should be conducted in groups no larger than ten and should meet at least once per week. Such therapy should be conducted by group leaders whose experience and training are commensurate with the type of therapy being provided and the responsibilities that they have for supervising the group.

Source:

See generally Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974); Relief Plans submitted by plantiff and council for *amici* in *Morales v. Turman,* at *et.seq.*, and submitted by the Department of Justice at 47 *et.seq.*

Commentary

This standard provides guidlines for the minimum levels of group therapy services which should be offered pursuant to Standard 4.215. It recommends that the size of the therapy group not exceed ten members. *See Morales Relief Plans, supra.* Restricting the size of the group should help insure that group leaders or therapists have some degree of control over the group processes and that the group participants will not be unduly intimidated by the size of the group. This is especially important when participants are expected to explore their thoughts and discuss their feelings about themselves and others. Although the size of the group alone will not guarantee a nonthreatening atmosphere, a small group may be more conducive to achieving the degree of mutual trust and stability necessary for a therapeutic environment.

While the nature of the group's activities may determine the frequency of the meetings, the standard recommends that groups meet at least once a week. *See Morales Relief Plans, supra* at 59. In programs such as guided group interaction, groups generally meet every evening. The meetings serve as a daily debriefing by each member regarding his/her activities of that day or days to come. *See* R. Stephenson and F. Scarpetti, "Essexfields: A Guided Group Interaction Program," *Group Interaction as Therapy,* 64 (1974); R. Huff "Program Based on Sociology and Social Work," appearing in D. Mann, *Intervening with Serious Convicted Juvenile Offenders,* 32-39 (1977). The frequency of meetings for other types of group therapy, such as group psychotherapy and family therapy, may be limited by the availability of the therapist or the ability of the families to attend sessions more than once a week.

For those programs in which the group itself constitutes an important element of the therapeutic processes—serving both as a means and a context—it is important that the program be structured to elicit maximum, genuine participation from the juvenile. *See* Standards 4.213 and 4.215; American Psychological Association, "Guidelines for Psychologists Conducting Growth Groups," *Ethical Standards of Psychologists,* 64 (1974); and American Public Health Association, *Standards for Health Services in Correctional Institutions,* 27 (1976).

The level or degree of participation in a particular program appears to be a critical determinant of the effectiveness of that program for the juvenile.

As involvement or ownership in a program increased, so did the prospects for more thorough, lasting, and functional change. Strategies that maximized the involvement of the offenders in their own rehabilitation made those individuals more sensitive to their own behavior, more accessible to peer influence and more likely to support new behavior. *See* Mann, *supra* at viii-ix.

The training and educational levels of the group therapist should be commensurate with the type of counseling being offered, and the responsibilities the therapist has for supervising the group. *See* Standard 4.2122 for staff qualificatons. For example, psychotherapy, whether provided in an individual or group context, should be conducted only by one skilled in these techniques. This standard recognizes the potential contribution of associate psychologists, caseworkers, and youth-care workers to act as group leaders or co-leaders. However, they should have the training, experience and supervision necessary to direct the group activities in a professional manner. These staff members, particularly those who are in daily contact with the youth may serve as positive role models for the youth, and can be effective in directing the group process. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* 702 (1976). Certain programs such as GGI, and certain counseling techniques such as transactional analysis, may also require the active participation and understanding of staff who may be working the juvenile in other capacities.

Related Standards

4.2122	Training Schools—Staff Qualifications
4.213	Training Schools—Services
4.214	Training Schools—Development of a Treatment Plan
4.215	Training Schools—Counseling and Group Treatment Services
4.217	Training Schools—Semi-Autonomous Treatment Models
4.2174	Training Schools—Mental Health Services
4.410	Right to Treatment
4.2193	High Security Units—Services
4.223	Camps and Ranches—Services
4.233	Group Homes—Services

4.2152 Semi-Autonomous Living Units

When administratively feasible, each living unit within a training school should emphasize a particular treatment modality, and the staff within each unit should receive in-service training to enhance their skills within the area of emphasis. The types of services and the quality of care within the various units should be reviewed periodically.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.2 (1977); National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* Standards 14.7 and 11.3 (1973) [hereinafter cited as *Corrections*].

Commentary

As described in the Commentary to Standard 4.2112, living units are designed to provide a cohesive living area which serves as more than just sleeping quarters for up to twenty juveniles. The living unit is intended to be the focal point of a juvenile's daily activities. This standard further recommends that the units be semi-autonomous in terms of the way each unit structures its activities and manages its day-to-day affairs. Such variation may be reflected in the way the following issues are resolved in each unit:

a) the level of resident's participation in decision making—ranging from a strictly authoritarian to a democratic style;
b) the scope of decisions to be made—from deciding housekeeping rules to recommending extensions or reductions of resident's privileges, *but see* Standards 4.53 and 4.54;
c) the system of rewards and punishments—from token economies for individual behavior to a limited team responsibility approach;
d) the primary counseling approach of the living unit staff and the degree to which it is integrated into the daily routine—from individual case work to intensive group therapy, *see* Standard 4.215; and
e) the intended homogeneity/heterogeneity of the residents—age, types of offenses, history of criminal involvement, sexual orientation, etc.

Through resolution of these issues, each unit will develop a distinct identity which will provide the assessment team with options for assigning juveniles to a living unit which is suited to their needs. *See* Standard 4.214. Although juveniles may be assigned to a particular unit with the intention that they remain with that unit for the duration of confinement, transfers should be allowed in accordance with the guidelines specified in Standards 4.71 and 4.72. A transfer decision should be made with the participation of members of the juvenile's assessment team, the juvenile, and other staff members who are familiar with the youth and the reasons for transfer.

The living units should be considered semi-autonomous and should encourage a certain degree of participatory management, *see Corrections, supra* at Standard 14.7, within the context of the basic rules and regulations of the facility. This is to avoid "a system in which all important decisions emanate from the superintendent's office, while the staff and youth feel powerless." *See* M. Luger, "Tomorrow's Training Schools," *Crime and Delinquency,* 548 (1973). Departure from highly authoritarian, regimented management of institutions was recommended by the 1973 National Advisory Committee on Criminal Justice Standards and Goals:

> Institutions must be opened up, and fresh points of view obtained in the decision-making process. Policies affecting the entire inmate body should be developed in consultation with representatives of that body. Decisions involving an individual should be made with his participation. Employees should also have a voice, and a participative management policy should be adopted. An independent check on policies, practices, and procedures suggests the establishment of an ombudsman office serving both inmates and employees. *See Corrections, supra* at 364.

The standard recognizes that variations in implementing any general treatment plan are bound to occur due to different personalities, experiences, interests, and specialized training of the staff, and their interactions with different juveniles. Given that these variations are inevitable, efforts should be made to capitalize on these differences by encouraging staff creativity and thereby generating a sense of responsibility for the environment of training school in general, and the living unit in particular. *See Corrections, supra* at 486.

Living unit staff such as caseworkers, youth-care worker, and the associate psychologist, as well as volunteers who work closely with the juveniles in a particular unit, should have a common understanding of the operating principles and appropriate implementation strategies associated with the modality being emphasized in the unit. A program of regular inservice training should be developed to enhance staff skills in the management or counseling techniques consistent with the treatment modality. The program may include holding regular group staff meetings moderated by the school psychologist or other consultant; attending seminars offered by training school staff; or taking relevant courses at nearby colleges and universities. *See* Standard 1.425.

In accordance with the recommendations of Standards 1.114 and 1.125 the local planning authority and the state agency should conduct regular assessments of the quality of care and services delivered within training schools. To assure that the juvenile's concerns are made known, the facility ombudsman should review the assessments for their accuracy and pursue matters which have not been adequately addressed in official reports. These assessments may be augmented by periodic accreditation reviews as required by various state laws or policies related to specific services or physical conditions. The results of such reviews should be made available to those authorities who have responsibility for a juvenile's placement in the training school, for the juvenile's living unit assignment, and for maintaining high quality of services and care. This may include family court judges, the assessment teams, and agency and facility administrators.

Related Standards

1.114	Evaluation and Modification of the Local Juvenile Service System Program Efforts
1.125	Evaluation of Local and State Efforts
1.425	Personnel Providing Direct Services to Juveniles
4.2112	Training Schools—Size and Design
4.214	Training Schools—Development of a Treatment Plan
4.215	Training Schools—Group Counseling and Treatment Services
4.2151	Training Schools—Group Counseling and Treatment Services—Group Therapy
4.53	Discipline—Loss of Privileges
4.54	Discipline—Disciplinary Procedures

4.216 Educational Services

Training school education programs should provide for the diverse educational needs of the juveniles placed therein, and should include academic, vocational, and special education components.

Sources:

See generally Morales v. Turman, 383 F. Supp. 53 (E.D. Tex. 1974); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standards 24.5, and 24.7-24.9 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

The phrase "training school" implies that education is a major function of such a facility. This standard recommends that training schools make available a comprehensive educational program to train the juveniles placed therein in the academic and vocational skills needed for successful reintegration into the community. *See Report of the Task Force, supra* at Standard 24.5. Subsequent standards on the academic, vocational and special education programs address the specific issues related to each educational component and its relationship to the educational program as a whole, as well as to other institutional programs. *See* Standards 4.2161-4.2163.

In general, the educational program should be designed to meet the diverse needs of the juveniles placed in the training school, primarily through the utilization of community resources. When educational services are provided in the community, the tuition costs should be charged to the school district in which the juveniles' parents reside and not to the receiving school district. In addition to the equity of this position, when school districts located in close proximity to a juvenile facility are required to bear the educational costs, greater resistance to acceptance of juveniles from the facility is created. When necessary educational services are not available in the community, or when it is not appropriate to permit a particular youth to attend local schools, the educational services should be provided within the training school in accordance with the minimum staff ratios and qualifications recommended in Standards 4.2121 and 4.2122. These programs should be able to accommodate youths with varying intellectual capabilities, educational skill and motivation levels, interests, and socio-cultural backgrounds. *See Morales*, 383 F. Supp. 56.

While the range of program offerings should be broad, each juvenile's program should be individualized. An educational plan should be tailored to the juvenile's particular strengths and weaknesses as determined in the assessment process. *See* Standard 4.214; and *Report of the Task Force, supra* at Standard 24.5. In developing their educational plans, juveniles should be encouraged to participate in both academic and vocational areas. *See* D. Lipton, R. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment*, 194 (1975). This may often be necessary for students in vocational classes who are weak in reading or math. An integrated approach to education such as this, depends on cooperation among teachers; requires a curriculum which allows for interface among subject areas; and discourages the use of a "track" system which concentrates an individual's educational experience either academic, vocational, or special education courses.

Both the individual plan and the overall educational program should be community oriented. That is, there should be a direct relationship between the programs which are offered through the facility, the juvenile's educational objectives and post-release plan, and the academic and vocational programs available to the juvenile upon release. This requires extensive outreach work by training school staff and administration in cultivating community referral resources that will provide educational training and employment opportunities. Encouraging community involvement through volunteer programs may improve the community's awareness of the problems juveniles face upon release and provide the impetus to involve others in developing community resources that can be tapped.

For specialized courses of interest or benefit to the juveniles which are not available within the training school or through community resources, legitimate correspondence courses should be made available and incorporated into the juveniles' educational program. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections*, 369 (1973). Additional flexibility in curriculum and classroom management to accommodate the constant turnover in population throughout the year can be provided through development of tutorial programs involving students and community volunteers. The tutorial programs can not only aid the instructor but also help to provide students with a positive role to fill in the classroom. Serving as a volunteer, however, should not be allowed to interfere with the student volunteer's own learning programs.

The National Advisory Committee further recommends

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that a system of accountability for the quality and relevance of the educational program be instituted by the state agency in conjunction with the local planning authority. *See* Standards 1.114 and 1.125; *Corrections, supra* at Standard 11.4; *Report of the Task Force, supra* at Standard 24.5. It should focus on the internal program operations as well as provide documentation for transferability of credit to programs outside the training school. An internal assessment of the effectiveness of each program should be conducted annually. Such assessments should examine the degree to which the educational programs offered are meeting the individual juvenile's learning objectives.

In addition, a thorough appraisal by community representatives, respected educators, training school residents, and education staff should be conducted at least every three years. *See Corrections, supra* at Standard 11.4. This assessment should examine the curriculum, learning materials, training school policies, and procedures which affect the educational program, educational staff qualifications, and community placements, for their relevance to the training school population and their comparability, at a minimum, to corresponding education programs and requirements for public schools. In addition, particular attention should be paid to assuring that both boys and girls are allowed and encouraged to participate in programs which have been traditionally offered to only one sex. This recommendation of the National Advisory Committee is consistent with the position taken by both the Task Force and the IJA/ABA standards which support co-educational facilities. This particular application of the principle is intended to expand educational opportunities, roles, and abilities of both sexes.

In summary, training schools should make available a wide range of educational programs which should be individualized in order to meet the needs of the juveniles sent there. Administration of the program should stress the use of community resources whenever possible. It should represent an interdisciplinary approach which focuses on preparing juveniles for successful re-entry into the community.

Related Standards

4.21	Training Schools
4.2121	Training Schools—Staff Size
4.2122	Training Schools—Staff Qualifications
4.213	Training Schools—Services
4.2161	Training Schools—Academic Education
4.2162	Training Schools—Vocational Education
4.2163	Training Schools—Special Education
4.223	Camps and Ranches—Services
4.233	Group Homes—Services
4.252	Community Correctional Facilities—Services
4.263	Detention Facilities—Services
4.32	Nonresidential Programs—Services

4.2161 Academic Education

A curriculum substantially equivalent to that required under the law of the jurisdiction for public school students should be available to all juveniles placed in a training school. The academic program should meet all requirements necessary for the transfer of earned credits to public schools within the state and should be certified to award academic diplomas to juveniles who meet the requirements for the award of such diplomas during their placement.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.5 (1976) [hereinafter cited as *Report of the Task Force*]: *Morgan v. Sproat,* 432 F. Supp., 1130, 1152 (S.D. Miss. 1977).

Commentary

Since many juveniles in training schools are subject to compulsory education laws, training schools have an obligation to insure that educational opportunities, comparable to those in the placing jurisdiction, are made available. Furthermore, because placement of juveniles in a training school is not intended to deprive them of services which would otherwise be available, these educational services should be available to all juveniles placed in training schools, regardless of their age. The standard recommends that the training school's academic program be designed to comply with state laws and educational standards which would enable students to earn academic credit leading to a high school diploma or its equivalent, for successfully completing courses taken while in the training school. *See Report of the Task Force, supra;* and *Morgan.* To insure transferability of academic credit, formal agreements should be negotiated between the agency or training school and the appropriate local or state educational authority. Criteria for obtaining credit should be no more stringent than it is for students earning credit for participating in similar academic programs in the public schools.

Successful reintegration of juveniles into community education programs, as well as the improvement of their basic skills, should be the primary goals of the academic program. *See Report of the Task Force, supra.* The academic program should be designed, staffed, and administered in a way to maximize the juveniles' opportunities to develop basic skills in areas such as reading, mathematics, and studying, and to apply these skills to other aspects of their lives. *See* D. Mann, *Intervening with Convicted Serious Juvenile Offenders,* 50-53, (1976). To the greatest extent possible, community resources should be utilized to provide academic services. *See* Standards 4.213 and 4.216; and Relief Plans submitted in *Morales v. Turman,* 383 F. Supp. 53, 61 (E. D. Tex 1974) by the Department of Justice. Negotiations with nearby schools to provide these services should establish agreements on financial reimbursements, *see* Commentary to Standard 4.216, eligibility criteria for participation in the educational furlough program, as well as provision of certain in-house educational services. This should not only assure comparability with public school programs, but also maintain a link with the community. In the case where the local schools are of inferior quality, the benefits of attending a community program over the quality of services that could be offered in-house should be weighed.

While the curriculum of the in-house education program should be substantially equivalent to the public school program in terms of the subjects offered and related learning materials provided, the teaching methods should attend as much to the student's process of learning as to the subject matter being covered. This should apply particularly to students who have the capability to learn, but lack the discipline or motivation, and often the positive learning experiences necessary to succeed in school. Given their diverse learning abilities and handicaps, which are frequently accompanied by behaviorial problems, juveniles in training schools require the best qualified staff available. *See* Standard 4.2122. Estimates by expert witnesses in *Morales* indicate the seriousness of the under achievement of juveniles in training schools. Less than 5 percent of all juveniles incarcerated by the Texas Youth Council were at their proper achievement level, and their average reading level was approximately five years below the norm. *See Morales,* 383 F. Supp. at 88; *see also* Mann, *supra* at 54. Also required is an approach which is flexible enough to adjust to the constant turnover in population and provide the necessary individualized instruction. The Providence Education Center, a model community-based academic educational program in Missouri, represents a problem-oriented approach for improving the basic skills of juveniles. Through the assessment process, a juvenile's particular learning problems are described in behavioral terms such as, "unable to spell consonants from sound; or needs attention to division with decimals, use money problems, etc." *See* Mann, *supra* at 54. The initial assessment offers a baseline against which a student's progress can be measured.

The use of nontraditional approaches and materials should be considered as an alternative to provide both the motivation and the means for a student to learn to read or understand math. For example, reading can be taught through parts manuals and industrial or automotive magazines. A machinist or mechanic employs calipers and gauges which can be used to instruct in decimals and fractions. *See* S.E. Johnson, "Using Vocational Skill Cluster Teams to Teach Adult Basic Education," A. R. Roberts (ed.), *Readings in Prison Education*, 208-218 (1973), cited in Mann, *supra* at 63. In order to achieve the curriculum flexibility and coordination, and individualized attention as well as adequate control in the classroom, the student-teacher ratio should be no more than 12:1. *See* Standard 4.2121. *But see Report of the Task Force, supra* at Standard 24.9, which recommends a 10:1 ratio.

Placement of juveniles in nongraded academic classes should be based on the functional educational level and the needs of the individual as determined in the assessment phase, rather than on the most recent grade level attained, or other factors which are not directly related to the juvenile's learning objectives. *See* Standard 4.214; *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *Morales Relief Plan, supra* at 52; and *Report of the Task Force, supra* at Standards 24.6 and 24.7.

The classroom instructor should serve as both the facilitator and evaluator of the progress which students are making toward achieving their learning goals. This involves making periodic assessments based on test results and observations; providing feedback to the student; and, when necessary, notifying the juvenile's assessment team of any significant modifications in the juvenile's educational program.

The academic counselor should be available to students for guidance and counseling in selecting a general course of study or to help students overcome learning obstacles. In addition, academic counselors should coordinate course content and schedules of those students whose primary focus is an academic program, but who may also be taking vocational or special education classes. A third major responsibility of the academic counselor should be arranging for students' participation in community programs, both while they are in the training school and after release.

Related Standards

4.2121 Training School—Staff Size
4.2122 Training School—Staff Qualifications
4.213 Training School—Services
4.214 Training School—Development of a Treatment Plan
4.216 Training School—Educational Services
4.2162 Training School—Vocational Education
4.2163 Training School—Special Education
4.2193 High Security Units—Services
4.223 Camps and Ranches—Services
4.233 Group Homes—Services
4.263—Detention Facilities—Services

4.2162 Vocational Education

All juveniles should receive career counseling to provide them with knowledge of a wide range of career options and with sufficient information and to choose among vocational and academic areas of emphasis.

A vocational education curriculum should be available to juveniles age 14 and over who choose to participate. Participating juveniles should receive at least 3 hours of vocational instruction per week in addition to academic studies, and those who at age 15.5 decide to undertake vocational education as their major area of emphasis should receive at least 15 hours of vocational instruction per week. An employability plan, based on extensive counseling regarding career options, should be developed for each juvenile participating in a vocational education program.

On-the-job training through work-release programs as well as job placement services should be provided for all juveniles participating in their vocational education program.

Limits should be established for "work-experience" training consisting of institution-maintenance activities. In no case should those activities constitute the primary focus of a vocational education progam.

Source:

See generally National Advisory Committee on Juvenile Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 24.5 and 24.8 (1977) [hereinafter cited as *Report of the Task Force*]; *Morgan v. Sproat,* 432 F. Supp. 1130, 1153 (S.D. Miss. 1977).

Commentary

The vocational component of the educational program should include counseling, instructional, and work-experience phases. Each phase should focus on reintegration of the juveniles into the community. *See Report of the Task Force, supra.* A career counseling program should be developed which provides students with information about different career options and the required education, training, certification, apprenticeship, physical strength, and other qualifications necessary for entry into a particular field or profession. The program should take into account the training and job opportunities available near the facility as well as in the juvenile's home community. It should emphasize not only the specific skills and technical training which may be required, but also the self-discipline needed to achieve whatever vocational goals they choose. It should be emphasized that throughout all phases of the program, vocational counselors and instructors should carefully consider the individual's capabilities and interests, and should not unrealistically raise a juvenile's expectations by making promises that are not attainable. Moreover, juveniles should not be assigned to academic or vocational areas of emphasis solely on the basis of class vacancies or other such administrative concerns. Rather, they should be allowed to choose for themselves after intensive counseling and assessment of their vocational aptitudes. *See Morgan.*

All juveniles age fourteen and over should be encouraged to participate, at a minimum, in the career counseling phase. Prevocational classes taught by a vocational instructor should provide students with an orientation to general demands of holding a steady job. *See* Gschwend "Vocational Education," appearing in D. Mann, *Intervening with Convicted Serious Juvenile Offenders,* 62-63 (1977). Issues such as workers' responsibilities, rights regarding wage and hour laws, trade unionism, safety regulations, workmen's compensation laws, and unemployment compensation provisions should be explained. Special attention should be given to job discrimination and racial and/or sexual stereotyping which limit potential. "Upward Mobility" programs as well as mechanisms for redress against discrimination should be discussed. Juveniles should be prepared to complete job applications, acquire a social security card, and interview for jobs. In addition, programs which prepare students who may be living independently upon their release should be developed. They should focus on various consumer education topics and may be taught in conjunction with the academic instruction.

Those juveniles who choose to participate in some areas of the vocational program should receive at least three hours of instruction per week in addition to academic studies and/or special education classes. *See* Relief Plan at 43, submitted in *Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974) by the Department of Justice. Participation in the vocational program is not intended to be exclusive of the other academic studies. Rather, the courses should be designed to complement one another. *See* Standard 4.216. The responsibility for coordinating an individual's educational program should be delegated to the academic or vocational counselor or educational diagnostician depending upon whichever area of emphasis predominates the plan. *See* Standard 4.2121.

In order to encourage maximum development of academic skills prior to focusing on specific job training, the standard recommends tnat juveniles do not undertake a fullscale vocational program until they reach fifteen and a half years of age. Many states have child labor laws which prohibit juveniles under a certain age from working full-time. Completing a training program prior to employment eligibility may be premature and possibly counter-productive. *See* D. Lipton, R. Martinson, and J. Wilks, *The Effectiveness of Correctional Treatment*, 196 (1975). Students selecting vocational education as their major focus of study should receive at least fifteen hours of vocational instruction per week to ensure adequate coverage of the material. The areas of emphasis, the planned progression of courses and work-training experience should reflect the vocational goals spelled out in the juvenile's employability plan. Each individual whose major program is to consist of vocational education and training should develop an employability plan in conjunction with the vocational counselor. It should expand upon the findings of the initial assessment report, incorporating new information about the juvenile's aptitudes, interests, and community resources, and outline specific steps to achieve the stated goals. *See Morales Relief Plan, supra* at 45-46. The plan should be completed within two months of the assessment study and revised whenever necessary. For those juveniles who are eligible and who choose to pursue and intensive vocational program, the plan should indicate prospective on-the-job training programs preferably in the community, which are suited to the student's specific area of study. In addition, vocational staff and training school administrators should make every effort through personal contacts or providing incentive through state or federal programs to secure commitments from employers to hire students who have successfully participated in a related training program. The need for good job placements, even part-time work, which builds on a juvenile's training experience cannot be over emphasized. *See* Lipton, Martinson, and Wilks, *supra* at 196 and 206.

In order to provide some kind of follow-up support, those juveniles who have been placed in community employment or training, whether under direct supervision of the training school staff or not, should have access to various resources which will help them with adjustment problems. *See* Gschwend, *supra* at 62. It is further recommended that evaluation should be conducted six months after a juvenile has been released to determine the relevance and adequacy of the facility's vocational program. *See* Standards 4.216, 1.114, and 1.125.

While a certain amount of daily maintenance of the living unit or other areas in the facility is reasonable to expect from residents, and while some of these maintenance activities may be directly related to a particular vocational training course, institution maintenance and repair should not be the primary focus of a vocational education program. *See* Standard 4.49; and *Morgan*. Maintenance work which is specifically related to a training program and is set forth in a juvenile's employability plan should be awarded appropriate credit toward certification in that area.

Related Standards

4.2121	Training Schools—Staff Size
4.2122	Training Schools—Staff Qualifications
4.213	Training Schools—Services
4.214	Training Schools—Development of a Treatment Plan
4.216	Training Schools—Educational Services
4.2161	Training Schools—Academic Education
4.223	Camps and Ranches—Services
4.233	Group Homes—Services
4.49	Work Assignments

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4.2163 Special Education

Special education programs should be available to meet the needs of juveniles who are educationally disadvantaged. Juveniles who should be provided with special education include those who:

a) Exhibit subaverage general intellectual functioning, possibly in conjunction with deficient adaptive behavior and/or physical impairments which inhibit their ability to learn;

b) Exhibit average general intellectual functioning, although have a visual, hearing, or speech impairment or emotional disturbances which significantly inhibit their ability to learn; and

c) Despite average intelligence, adequate hearing, vision, motor capacity, and emotional adjustment, exhibit a substantial deficiency in learning and conceptualizing which is frequently demonstrated by their inability to read or clearly and consistently understand spoken language.

In utilizing intelligence quotient and achievement tests to determine whether a juvenile requires special education, primary reliance should be placed on those tests which are appropriate for the juvenile's ethnic and cultural background.

Sources:

C. A. Murray, *The Link Between Learning Disabilities and Juvenile Delinquency,* 11-22 (1976); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.7 (1976).

Commentary

Special education programs should be available to all juveniles in need of such services. The emphasis of special education should be to overcome educational handicaps sufficiently to permit juveniles to participate effectively in the academic or vocational program and should not be viewed as an area of emphasis in itself. *See* Standard 4.216. Whenever possible, juveniles should remain in the regular education program and receive special education on a supplemental basis.

The identification and remediation of an individual's specific learning handicap(s) require the selection, administration, and interpretation of appropriate diagnostic tests by a qualified educational diagnostician. *See* Standards 4.2122 and 4.214. Based on the test results and professional observations, a learning program which is suited to the individual should be designed by the educational diagnostician and the diagnostic classroom teacher, and implemented with adequate supervision and periodic retesting. *See* Murray, *supra* at 15-16.

Students in need of special education often have a combination of learning-related problems which cause them to function well below the achievement level expected of them in one or more academic areas when compared to other students their age. *See Learning Disabilities: Link to Delinquency Should Be Determined, But Schools Should Do More Now.* 48-51 (1977) [hereinafter cited as *Learning Disabilities*]. A student's under-achievement may be attributable to one or more of the following variables which may affect the individual's ability to meet the expected age-group norms: the level of general intellectual functioning; the degrees to which physical or emotional impairments contribute to or are a result of one's learning problems; and perceptual problems which may be a result of organic brain damage, minimal brain dysfunction, or some neurological impairment. Although many juveniles' achievement levels may have suffered due to environmental disadvantages such as poor schools or disruptive home life, the primary focus of the special education component is on those students who exhibit the problems discussed above.

Paragraph (a) describes a juvenile who is educable mentally retarded, i.e., whose primary disability is related to intelligence but who may have other additional physical or emotional problems. These students, although they may have certain limits to their academic achievement, should be encouraged to pursue the basic knowledge and skills which will enable them to live as independently as possible. Inclusion of the educable mentally retarded in this standard is not intended to endorse the commitment of the severely mentally retarded or emotionally disturbed juveniles to training schools. *See* Standard 4.73. Rather, it reflects the conclusion of the National Advisory Committee instead of further segregating those borderline cases who may be amenable to specialized treatment, services should be made available to them to better assure their successful re-integration into the community. *See generally* B.S. Brown and T.F. Courtless, *The Mentally Retarded Offender,* 13, and 55-56 (1971). Training school staff should be made aware of the specific problems of individual juveniles and trained in the most effective ways of dealing with them, reinforcing learning experience and helping them achieve a level of functioning which will permit some degree of independence and self-sufficiency.

Paragraph (b) describes the juvenile who is functioning within the range of average intelligence, and whose major learning impediment is emotional and/or physical. Training schools should be responsible for providing whatever mechanical devices or therapeutic treatments are necessary to correct any hearing, speech, or visual defects which may impede the juvenile's capability to learn or speak. This may range from regular eye glasses or speech therapy to surgery, and should be undertaken without cost to the family. *See* Standard 4.217. Those services may be combined with remedial tutoring to accelerate the juvenile's progress.

For those with emotional or behavioral problems, psychological counseling combined with a specialized learning program may be necessary to develop self-discipline for studying or to reinforce the confidence of juveniles in their own ability to learn and attain a level of achievement commensurate with their intellectual capabilities.

Paragraph (c) covers juveniles who have specific learning disabilities which are not related primarily to basic intelligence, or physical or emotional problems, but rather to perceptual handicaps which affect their ability to correctly and consistently process verbal or written information. *See* Murray, *supra* at 12. Perceptual problems may be exhibited in a number of symptoms often associated with language processing, distinguishing spatial relations and hyperkinesis. Dyslexia, or "word blindness," one of the best know types of learning disabilities, includes a variety of problems in visual processing of language. "In its extreme forms, it can produce total inability to absorb meaning from written symbols, even though the victim of it may be able to understand spoken information with normal or above normal intelligence." *See* Murray, *supra* at 13. Another type of learning disability encompasses auditory and speech defects in addition to visual ones. Symptons would include repeating a set of nonsense syllables in an attempt to say or read a sentence; or being unable to understand language spoken at a normal speed, thus losing track of spoken instructions after a few words. *See* Murray, *supra* at 12-13. Inability to correctly perceive spatial relationship (left-right, up-down, or speed-distance) may result in clumsiness and lack of physical coordination. Hyperkinesis would be characterized by symptoms of a short attention span, impulsiveness, irritability, social awkwardness, and clumsiness.

The causes of learning diabilities are thought to be organic. Although they are generally attributed to some brain and neurological damage or dysfunction, no medical techniques currently available can determine the location or nature of the damage. *See* Murray, *supra* at 14. While the learning disabilities field is relatively new, and the literature on the effectiveness of various treatments is sparse, the fact that an individual's learning disabilities extend to other areas of daily functioning, suggests the need for a comprehensive approach to treatment involving more than just the special education staff. *See generally* P. Meyers and D. Hammill, *Methods for Learning Disorders* (1969); and W. Cruishank and D. Hallahan, *Perceptual and Learning Disabilities in Children, Volumes I and II* (1975). Such an approach would call for substantial training of and communication among all staff members who work with juveniles with learning disabilities.

In determining a juvenile's levels of intellectual and academic functioning and the need for further educational diagnostic study, tests which are biased against juveniles of a particular ethnic or cultural background or which deprive them of needed services should not be used. *See Morales v. Turman*, 383 F. Supp. 53, at 88 *et. seq.* (E.D. Tex. 1974). The court in the *Morales* case concluded that the Lorge-Thorndike IQ test and the Gray-Votow-Rogers Achievement Test, were inappropriate for testing for dyslexia. *See Learning Disabilities, supra* at 52-53 for tests administered by GAO consultants to determine the incidence of learning disabilities in a sample of adolescents in detention centers.

The provisions of the standards for the educational services which should be made available to juveniles in training schools, and especially to those who are in need of special education, reflect the spirit of current legislation, Pub. L. 94-142, codified at 20 U.S.C. 1401 *et.seq.*, Education for All Handicapped Children Act. The act specifies that all children, regardless of their handicaps, should be provided with free appropriate public education and related services designed to meet their unique needs.

Related Standards

4.2121	Training Schools—Staff Size
4.2122	Training Schools—Staff Qualifications
4.213	Training Schools—Services
4.214	Training Schools—Development of a Treatment Plan
4.216	Training Schools—Educational Services
4.2161	Training Schools—Academic Education
4.2162	Training Schools—Vocational Education
4.217	Training Schools—Health and Mental Health Services
4.2174	Training Schools—Mental Health Services
4.2193	High Security Units—Services
4.223	Camps and Ranches—Services
4.233	Group Homes—Services
4.73	Transfers Among Agencies

4.217 Health and Mental Health Services

Training schools should provide programs designed to protect and promote the physical and mental well-being of juveniles placed therein, to discover those in need of short-term and long-term medical and dental treatment, and to contribute to their rehabilitation by appropriate diagnosis and treatment.

Training schools should undertake treatment of health problems, without cost to the juvenile or his/her family including medical care and correction of health defects of a cosmetic nature. Procedures should be established for assuring the continuation and completion of treatment begun in a facility whenever a juvenile remains subject to the disposition of the family court following release from the training school.

Health services available to juveniles placed in a training school should be of equal quality to those available in the community.

Sources:

American Academy of Pediatrics, "Health Standards for Juvenile Court Residential Facilities, 52 *Pediatrics,* 452-457 (1973); *See generally* E.M. Brecher and R. Della Penna, *Health Care in Correctional Institutions* (1975); and American Public Health Association *Standards for Health Services in Correctional Institutions* (1976).

Commentary

This standard strongly urges that training schools develop a comprehensive approach to the provision of medical, dental, and mental health care services. *See* American Academy of Pediatrics, *supra* at 452; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.6(1) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Corrections Administration*]. Such an approach requires that each juvenile's short-term and long-term rehabilitation needs be given attention. The primary objectives of the health care program should be to actively protect and promote physical and mental well-being of juveniles by assuring that appropriate diagnostic, treatment, and preventive services are provided by competent, qualified physicians, dentists, psychologists, and/or psychiatrists, with the assistance of appropriate support personnel. *See* Standards 4.2121 and 4.2122.

Standards 4.2121 recommends that a physician, dentist, psychiatrist (or psychologist) be available at all times, and that a registered nurse be on duty 24-hours-a-day in case of an emergency. *See Morales v. Turman,* 383 F.Supp. 53, 101 (E. D. Tex. 1974). In addition to having these personnel and services available, the facility should establish and implement policies and procedures which provide juveniles with information about and access to these services without delay or interference. *See Morales,* 383 F. Supp. at 105; and American Public Health Association, *supra* at vii. Medical furloughs should be granted for procedures or treatment which cannot be safely or effectively administered in the facility, *see* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* 36 (1973), and bilingual personnel should be available in areas where languages other than English are frequently spoken. *See generally Morales.*

In 1976, a national study was conducted to determine how certain standards recommended by the 1973 National Advisory Committee were being implemented in a representative sample of residential and nonresidential juvenile correctional programs. Juvenile respondents in training school-type facilities reported having less accessibility to health services than those in community-based programs, especially group homes. Inspite of the availability of in-house medical programs in the institutions and virtually none in group homes, only 35 percent of the juveniles in training schools reported ready access to medical services, compared to 75 percent of group home respondents. *See* P. Isenstadt, "National Standards and Program Practices," in R. Vinter (ed.), *Time Out: A National Study of Juvenile Correctional Programs,* 162-165 (1976). The report further indicated that reliance on existing health services in the community may be preferable to small self-enclosed units, both in terms of the cost and quality of health care.

Training schools should be responsible for acquiring the necessary treatment for juveniles and should establish procedures to assure the quality of services as well as the continuation and completion of desired treatment following a juvenile's release. When possible, juvenile facilities should contract for medical services with community hospitals for emergency, inpatient, and outpatient care services. The Purchase of Medical Services Contract between the New York City Department of Correction and Montefiore Hospital which covers services to some 7,000 inmates on Rikers Island serves as a useful model. *See* Brecher and Della Penna, *supra* at Ch. 10 and Appendix C (1975). The agreement also provides for a wide range of specialty diagnostic and treatment services and equipment. Similar prepaid contractual agreements may also be negotiated for dental and mental health care services. Whether provided through contracts or delivered by facility staff, the quality of health and mental health services provided to juveniles in training schools should be subject to the same professional and legal standards applicable to private patients.

This standard goes beyond the traditional interpretations of what constitutes adequate medical care. With a few exceptions, courts have held that the only criterion on which to determine whether a person has been deprived of adequate medical services is whether medical treatment is needed or essential, as opposed to desirable. *See* Vinter, *supra* at 159. The standard reflects the position that health care at juvenile facilities should be an integral part of the individual's overall rehabilitation program. Thus, in addition to caring for immediate health care needs, the correction of a juvenile's physical defects may be considered appropriate, if such remedies are, in fact, desired by the juvenile and would contribute substantially to the juvenile's rehabilitation. This may include providing for such things as eye glasses, hearing aids, physical therapy, and elective therapeutic or cosmetic surgery. *See* Standards 4.216 and 4.2163. It should be stressed, however, that "no surgery should be permitted—except in the case of grave emergency—without the informed consent of the juvenile and the (juvenile's) parents or guardian." *See* IJA/ABA, *Corrections Administration, supra* at Standard 7.6(1).

Adequate facilities and the equipment necessary to conduct the initial health examination should be available. *See* Standard 4.2171. An infirmary which meets the same requirements as university and college infirmaries should be available for juveniles who need close medical attention for a limited period of time. *See* American Public Health Association, *supra* at 18. If the medical or psychiatric needs of a juvenile are such that they cannot be adequately provided for through the facility of placement, the juvenile should be returned to the family court for alternate pacement. *See* Standard 3.189; and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 24.10 (1977). However, the high cost of medical services required should not in itself be a valid reason for seeking alternative placement.

Whenever a juvenile in the course of treatment is released, efforts should be made to assure the continuation of the treatment to its completion. This does not mean that training schools should be responsible for the costs of continued postrelease care, nor that juveniles should be kept in a training school merely to ensure that they complete necessary medical treatment prior to release. Rather, it is intended to encourage training schools to make every effort to assure that treatment is continued through other sources of public funding or through referral to community health care programs.

The cost of medical care should be the responsibility of the state agency. Given the funding limitations of juvenile facilities, it is essential to seek additional sources of funding in order to provide adequate medical care. Rarely are benefits for the health care of incarcerated juveniles paid for by public health programs and private insurance companies—either because of failure to utilize these options or the existence of explicit exclusionary policies. *See* Brecher and Della Penna, *supra* at 61. According to Section 1905(a) (17) of the Social Security Act, and 45 C.F.R. 248.60, juveniles incarcerated in public facilities are not eligible for Medicaid benefits. Until September 1977, youths who were eligible for Medicaid benefits prior to incarceration and participating in a Medicaid program lost their benefits immediately upon placement in a public facility. Although the Health, Education and Welfare administrative regulations were recently reinterpreted to extend benefits for the first thirty days of confinement, this notification affects only those juveniles who have previously been deemed eligible for Medicaid benefits.

The National Advisory Committee on Standards recommends that all legislation and administrative regulations which excluded incarcerated juveniles from full medical coverages be changed to include all incarcerated juveniles, regulations and their previous eligibility status for public medical assistance.

In the meantime, training school should thoroughly explore previously untested alternatives for funding or providing medical health care for juveniles in the facility. One alternative would be to have someone such as a hospital clerk either working in the facility or training other personnel and volunteers to check each juvenile's eligibility statutes for various programs and benefits. Another alternative would be to explore cooperative arrangements with nearby medical schools for certain services.

Another problem area in health care delivery in institutions involves lines of authority. This standard does not specify whether services should be under the direct supervision of the state agency which is responsible for the administration of the facilities; an agency whose primary responsibility is health care delivery, *see* American Public Health Association, *supra* at viii, or multi-disciplinary health councils at each facility on which both health care and administrative staff serve to plan for service delivery, *see* American Academy of Pediatrics, *supra* at 452. Whatever administrative system is adopted, its primary function should be to obtain optimum service for juveniles from available medical resources, to assure the professional integrity and quality of care delivered by its staff, and protect the confidential relationship between patient and health professionals. To assure adequate protection of patients' rights, an ombudsman or other person acting as a juvenile advocate should have direct access to the administrative body responsible for health care services. Such advocates should represent the juveniles' interests in resolving individual problems as well as in formulating new policies and reviewing their implementation. *See* Standards 4.82 and 4.2172.

In the administration of health care services, prevention of potential health problems should be a focus of the health assessment and development of an individual's health program. A preventive approach to health care should also be promoted by developing and implementing a comprehensive health education program for juveniles covering a wide variety of health-related issues, including dental and personal hygiene, sex education, contraceptive measures, communicable diseases, nutrition, and alcohol and drug abuse. *See* American Academy of Pediatrics, *supra* at 457. All treatment staff should be prepared and willing to answer juveniles' questions regarding health and health-related problems. Maintaining a physical environment which is both clean and free of hazardous obstructions will help prevent the spread of sickness or injury.

Standards 4.2171-4.2174 discuss specific issues related to the provision of health services including the need for an initial health examination and assessment, the training school's responsibility toward the patient, provision of adequate diet, and the administration of mental health services. While these standards relating to health care are found in this section on training schools, many of the same principles apply to the provision of health care and services in other types of residential facilities for youth.

Related Standards

4.213	Training Schools—Services
4.2171	Training Schools—Initial Health Examination and Assessment
4.2172	Training Schools—Responsibility Toward Patients
4.2173	Training Schools—Diet
4.2174	Training Schools—Mental Health Services
4.2193	High Security Units—Services
4.223	Camps and Ranches—Services
4.233	Group Homes—Services
4.263	Detention Facilities—Services
4.410	Right of Juvenile—Right to Treatment
4.62	Use of Restraints—Medical Restraints
4.82	Ombudsman Progrmas

4.2171 Initial Health Examination and Assessment

Each juvenile, as part of the admittance procedures, should be examined for apparent injuries, and for fever or other signs of illness. The examining officer should also note the juvenile's level of consciousness and level of gross motor function. Written standing orders should define the conditions which require prompt medical or nursing attention.

All juveniles placed in a training school should undergo a health assessment at the first possible opportunity after admission. Exceptions should only be made for juveniles with a written record of a thorough health assessment which is sufficiently current so that no substantial change can be reasonably expected. Health assessment should include physical examination within twenty-four hours of admission, the taking of a medical history, the taking of a mental health history if necessary, screening for vision and hearing defects, immunization status, and a dental examination. Health conditions which might affect behavior, such as epilepsy or diabetes, should be reported to the appropriate assessment team in a manner compatible with medical ethics and the rights of the patient.

Sources:

American Academy of Pediatrics, "Health Standards for Juvenile Court Residential Facilities," 52 *Pediatrics,* 452-457 (1973); and E. Brecher and R. Della Penna, *Health Care in Correctional Institutions,* 8-11 (1975).

Commentary

This standard urges that a preliminary health examination be conducted at the time a juvenile is admitted to a training school. This examination should take place prior to allowing the individual to have contact with other juveniles in the facility. This initial screening should be conducted and recorded by the attending nurse or a medical paraprofessional trained to detect any critical medical problems which would affect the juvenile's admission to the facility or subsequent processing. For example, the newly arrived juvenile may be suffering from a condition which, if left unattended, could result in further harm to the juvenile, or the spread of an infectious disease to others in the facility. Such precautions should be taken for the juvenile's own protection, for that of others in the facility, and for the facility itself which assumes liability for the individual's care upon admission. This preliminary screening procedure should be conducted in a place which offers privacy.

Written procedures should be developed which specify what course of action should be taken given certain symptoms. These orders should serve a dual purpose—to assure consistent handling of new admissions, and to provide a guide for all other members of the staff in the handling of certain medical emergencies. These instructions should be prominently displayed throughout the facility and provisions should be made to acquaint staff with them.

The full health assessment, to be conducted within twenty-four hours of admission, should consist of three major elements: medical history, a physical examination, and laboratory tests. For those with a current assessment on file, only an abbreviated version of the examination may be necessary.

Information about a juvenile's current and past medical, dental and mental health should be included in the medical history. The history may be taken by the nurse and augmented as necessary by the doctor, dentist, psychiatrist, or psychologist in the course of their subsequent examinations. To obtain a complete medical history it may be necessary to talk with the juvenile's parents or guardians as well as the juvenile and request information from the juvenile's regular source of medical or dental care if one exists. The juvenile's regular source of medical care should only be contacted if the juvenile has granted written consent and only when the medical history reveals a gap of important information such as immunization status, dangerous allergic reactions, family history of certain illness, etc., unless during the course of the examination, the physician determines that such contact is necessary. *See generally* American Academy of Pediatrics, *supra* at 452.

The information collected in the medical history should be accurately recorded in the juvenile's medical file. Medical records should be maintained in a locked file, separate from other legal or administrative records. Records and any other medical information compiled during the juvenile's stay should be treated as confidential information. Access to it should be governed by the principles set forth in Standard 1.533, and those set forth in: (a) American Medical Association, *Principles of Medical Ethics,* §9 (1971), which states that "a physician may not reveal the confidences entrusted to him in the course of medical attendence . . . unless . . . the physician is required to do so by law or it becomes necessary in order to protect the welfare of the individual or community;" and (b) Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Juvenile Records and Information Systems,* Standard 5.3 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Information Systems*]. Only those persons directly involved in the provision of medical services or in making the decision related to providing those services such as the assessment team, should have access to medical information, and then only when access is essential for treatment or decision-making purposes. *See* Standard 4.214; and IJA/ABA, *Information Systems, supra.* In cases where the juvenile has a legal right to receive certain medical treatments without the consent of parents or guardian, information related to that treatment may not be disclosed to the parents without the juvenile's informed written consent. *See* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Rights of Minors,* Standard 4.2(B) (tentative draft, 1977). The facility should establish and maintain a medical record system and procedures which are both efficient, for medical purposes, and secure, for the protection of the individual's privacy. *See* Brecher and Della Penna, *supra* at 13-15; and American Public Health Association *Standards for Health Services in Correctional Institutes,* 102-104 (1976).

Prediagnostic laboratory tests should be conducted on a routine basis to screen all juveniles for tuberculosis, unless there are recent test results available, and for venereal diseases. *See* American Public Health Association, *supra* at 3.11. All test procedures including taking blood and urine specimens necessary for these and other diagnostic tests should be conducted or supervised by the facility nurse. The test samples should by analyzed by a reputable, licensed laboratory, and the results should be recorded in the juvenile's medical file.

The physical examination to be conducted by a doctor should include at a minimum the following elements: measuring blood pressure, respiratory rate and pulse, identifying and assessing physical abnormalities which may indicate further injury and which may affect an individual's health, preliminary screening for visual or auditory impairments, and a dental examination. Referral of the juvenile to a psychiatrist or psychologist for mental health assessment may be called for in the dispositional order. If there are no provisions for such an assessment in the order, a decision to refer should be based on staff observations of the juvenile's behavior and on an intial interview by the psychologist. The results of the examination(s) should be recorded in the juvenile's medical file, and should include all pertinent information—both negative and positive findings. For example, if the medical history indicates the juvenile had mononucleosis or hepatitis, the record should state whether the liver or glands *are* or *are not* enlarged or tender. *See* Brecher and Della Penna, *supra* at 10.

The physician who conducted the examination should review the results with the juvenile and advise the juvenile on steps he/she should take (diet, exercise, etc.), and any future diagnostic and treatment measures (including medication) which may be necessary. *See* Brecher and Della Penna, *supra* at 10. Particular attention should be paid to health conditions such as diabetes, epilepsy, or hyperkinesis, which may affect behavior. Certain adjustments necessary to accommodate the dietary needs and medication schedules of individuals with these conditions should be made.

The results of the preliminary procedures, the laboratory tests, and the physical examination should form the basis of the juvenile's health care program at the training school. A summary report by the physician(s) outlining the juvenile's short-term and long-term health care needs and suggested treatment strategies should be made to the assessment team. Information contained in the report should be only that which is critical for the assessment team to know in order for them to adequately perform their tasks and protect the individual's health. *See* Standard 4.214; and American Medical Association, *Principle of Medical Ethics,* §9 (1971).

Related Standards

4.2121	Staff—Staff Size
4.2122	Staff—Staff Qualifications
4.213	Staff—Services
4.214	Development of a Treatment Plan
4.216	Educational Services
4.217	Health and Mental Health Services
4.2172	Responsibility Toward Patients
4.2173	Health and Mental Health Services—Diet
4.2174	Mental Health Services
4.2193	High Security Units—Services
4.223	Camps and Ranches—Services
4.233	Group Homes—Services
4.263	Detention Facilities—Services
4.410	Rights of Juveniles—Right to Treatment

4.2172 Responsibility Toward Patients

Appropriate permission should be obtained for the performance of significant medical and dental procedures. Permission for such procedures should be obtained from a juvenile's parents or guardian unless the juvenile has a legal right to receive the medical or dental service without that consent.

All medical and dental care should be rendered with consideration for the juvenile's dignity and feelings. Medical procedures should be performed in privacy and in a manner designed to encourage the juvenile's subsequent utilization of appropriate medical, dental, and other health services.

The use of any procedures, techniques, or medications that have not previously passed rigorous scientific tests which demonstrate both their safety and their effectiveness, or that pose an unnecessary threat to the juvenile's physical or mental well-being, should be prohibited.

Sources:

See generally American Academy of Pediatrics, "Health Standards for Juvenile Court Residential Facilities," 52 *Pediatrics* 3 (1973); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Rights of Minors,* Standards 4.1-4.9 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Rights of Minors*].

Commentary

This standard outlines the responsibility which training schools have for assuring that every juvenile's rights as a patient are protected and that services are rendered in a professional manner. *See Newman v. Alabama,* 349 F. Supp. 278, 285-287 (M.D. Ala. 1972). While placement of a juvenile in a training school transfers many of the responsibilities for the daily care of the juvenile to the facility, it is not intended to terminate parental rights. *See* Standard 3.185. In requiring that appropriate permission be obtained from the parents, the standard recognizes the importance of keeping communications open and maintaining good family ties while the juvenile is confined. It also recognizes that juveniles, by statute or court decisions, have certain legal rights to medical treatment without parental consent. The training schools should be responsible for assuring that juveniles obtain all of the services to which they are entitled and that they are not forced to accept services or treatment which they have a right to refuse.

The standard recommends that "appropriate permission" be obtained before significant medical or dental treatment is administered to a juvenile. The nature of the permission required should vary according to the type of procedures and their accompanying risks to the patient; the necessity or urgency of the treatment—i.e., the risks of not providing the treatment; and the juvenile's legal rights to obtain the treatment being sought. These considerations should be reflected in:

a) the type of permission required—formal or informal;
b) the time sequence for obtaining permission—prior to treatment, or after the initial treatment;
c) the party which has the ultimate authority to grant or withhold permission for treatment—the juvenile, the parent figure, or state; and
d) discretion regarding parental notification subsequent to providing services to a juvenile—the juvenile or physician.

Whenever possible, formal written permission from both the juvenile and the juvenile's parents should be obtained prior to conducting any medical or dental procedure which poses a significant risk to the juvenile's health (even though the treatment is an intended remedy for a condition which also poses a substantial risk to the juvenile's health), involves anesthesia, minor or major surgery, or treatment which requires long-term participation of the juvenile. *See* American Academy of Pediatrics, *supra* at 453; and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Noncriminal Misbehavior,* Standard 6.3(c) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Noncriminal Misbehavior*]. In emergency circumstances—i.e., those in which the juvenile's life is in danger, or when the juvenile is unconscious or otherwise unable to make a rational judgment about the need for treatment—the urgency of the situation would require that the attending physician make a professional judgment as to the appropriate couse of action. *See* IJA/ABA, *Noncriminal Misbehavior, supra* at Standard 5.3(c). In such cases, the parents should be notified immediately and consulted, and if further treatment is necessary, their permission should be obtained.

In seeking permission, the expected benefits and dangers of the proposed treatment as well as those associated with alternative courses of action should be clearly and carefully explained to the juvenile and, when appropriate, to the juvenile's parents. Juveniles should have recourse to a second medical opinion when a proposed procedure is particularly dangerous or the diagnosis is subject to some question. *See* W. Leeke, "The Emerging Right of the Confined," in American

Bar Association/American Medical Association, *Medical Health Care in Jails, Prisons and other Correctional Facilities*, 205-206 (1973). Subsequent consent or refusal by either the parent or the juvenile should be documented in the juvenile's medical file. Refusal of treatment should not joepardize the individual's prerogative to seek treatment at a later time; nor should formal consent prevent the juvenile or the parents from with-drawing that permission and refusing to allow the treatment.

The right to refuse treatment however, should not extend to situations in which the juvenile's life or health is in serious danger. Nor should it preclude treatment for an illness which if left untreated would jeopardize the health of others in the facility, thereby violating their personal rights. *See* Leeke, *supra* at 199 and 206.

In fulfilling their obligations, training school staff are likely to encounter situations in which it is unclear whether the juvenile has a right to obtain (or to refuse) certain services over the objections of the parent, or without the parents' knowledge of such treatment. The Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Correctional Administration*, 414 (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Corrections Administration*] suggests that in the event of a conflict between the juveniles and their parents, a court order should be sought to resolve the conflict based on the medical need presented, the juvenile's age and discretion, and the reasons for objections. The courts have demonstrated their willingness to order medical treatment involving corrective surgery sought by children over the objections of their parents, even when such intervention was not necessary to save the child's life or limb. *See* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Dispositions*, 115-116 (tentative draft, 1977). In order to assure that the juvenile's interests are represented at such a hearing, the National Advisory Committee recommends that training schools should provide the juvenile with access to legal representation. *See* Standards 3.132.

The grievance procedures described in Standard 4.81 should be used when the training school administration seeks to impose medical treatment not wanted by a juvenile or objects to providing treatment being sought by a juvenile. An ombudsman may take part in these proceedings, and if the situation warrants, may seek legal counsel for the juvenile to pursue the matter further. *See* Standard 4.82.

The IJA/ABA, *Rights of Minors, supra* at Standards 4.7-4.8 recommends that prior parental consent or subsequent notification of treatment should not be mandatory for juveniles to receive treatment for chemical dependency, venereal disease, contraception, or pregnancy. Regarding these matters, juveniles are more likely to seek necessary treatment when it does not involve disclosing certain personal activities or problems to their parents. Under these circumstances prior parental consent or required subsequent notification may act as a significant deterrant to seeking necessary treatment or personal counseling and advice.

In determing whether to notify parents about a particular treatment—over the juvenile's objections and in spite of the juvenile's legal right to the treatment—the physician should consider whether failure to inform the parent would seriously jeopardize the juvenile's health, taking into consideration:

a) the impact that such notification could have on the course of treatment;
b) the medical considerations which require such modification;
c) the nature, basis, and strength of the juvenile's objectives; and
d) the extent to which parental involvement in the course of treatment is required or desirable. *See* IJA/ABA, *Rights of Minors, supra* at Standard 4.2(B). (1) (a-d), and pp. 54-59.

Resolution of conflicts between the parents and juveniles should be approached in a manner which respects of rights of the juvenile as well as the parental concerns.

The health assessment process and the provision of adequate follow-through services are important elements in providing quality health care and services, and every precaution should be taken to assure that the individual's privacy is preserved and personal feelings are respected. *See* Standards 4.2171 and 4.215. Just as written consent should be obtained from a juvenile prior to conducting significant medical or dental procedures, the juvenile's permission should be sought in order to perform routine dental operations and more personal procedures such as rectal and pelvic examinations. These and other portions of the physicial examinations should be conducted in privacy and in a professional manner. The juvenile or the physician may request that a chaperone be present at the examination.

With the exception of emergency care, specific services ordered by the court, the initial assessment conducted at the time of admission and certain prediagnostic tests, juveniles should have an option whether to participate in a medical, dental, and mental health program. The manner in which these initial procedures are conducted may affect the juvenile's confidence in the medical services offered and the willingness to participate in important follow-through services. The quality of medical service, whether provided in the training school or through the agencies and programs, should be closely monitored and unethical or unprofessional conduct should not be tolerated. Incidents which may indicate improper conduct in prescribing treatment or in delivering treatment should be reported to the administration through the facility's ombudsman or the person acting as a child advocate. An investigation of the matter should be conducted by an independent body, and appropriate action should be taken on the basis of the investigation. *See* Standard 4.82.

Quality of services can be assured only through careful documentation and periodic review of treatment procedures and records. *See* Commentary to Standard 4.217. In view of the potential misue and abuse of certain drugs in the facility, particularily stimulants, tranquilizers, psychotropic, and other mood altering drugs, *see* Hearings before the Subcommittee to Investigate Juvenile Delinquency, 94th Congress, *Drugs in Institutions* (1977), administration of these drugs should be monitored both internally and periodically independently. *See* Standards 1.533 and 1.535. Particular attention should be paid to the type, quantity, frequency, method of administration, security measures, and the short- and long-term effects of the drugs on the juveniles as observed by the medical personnel and treatment staff. *See* Standard 4.62; *see generally IJA/ABA, Corrections Administration, supra* at Standard 4.10 (F).

Futhermore, while the National Advisory Committee does not specify the details of a facility's medical policies, it strongly urges that use of any procedures, techniques, or medications, which have not previously passed rigorous scientific tests which demonstrate their safety *and* effectiveness, or which may pose an unnecessary threat to the juvenile's physical or mental well-being be prohibited. This provision should extend not only to the treatment agent itself—i.e., that the drug be proven safe and effective—but also to the manner in which the treatment is administered. It should also require that the administration of the treatment be strictly limited to medical purposes and not be indiscriminately employed as a means of behavior control. *See* Standards 4.410 and 4.62.

Related Standards

1.533 Confidentiality of Records—Access to Intake, Detention, Emergency Custody, and Dispositional Records
1.535 Confidentiality of Records—Access for Purposes of Conducting Research, Evaluative, or Statistical Studies
3.132 Representation by Counsel—For the Juvenile
3.185 Criteria for Termination of Parental Rights
4.2121 Training Schools—Staff Size
4.2122 Training Schools—Staff Qualification
4.213 Training Schools—Services
4.215 Training Schools—Development and Implementation of an Individual Program Plan
4.217 Training Schools—Health and Mental Health Services
4.2171 Training Schools—Initial Health Examination and Assessment
4.2173 Training Schools—Diet
4.2174 Training Schools—Mental Health Services
4.2193 High Security Units—Services
4.22 Camps and Ranches—Services
4.23 Group Homes—Services
4.25 Detention Facilities—Services
4.410 Right to Treatment
4.62 Use of Restraints—Medical Restraints
4.82 Ombudsman Programs

4.2173 Diet

Training schools should provide an adequate, varied diet and well-prepared and well-served meals supervised by a licensed dietician who should receive special training pertaining to allergic reaction, hyperactivity, and other mental, emotional and physical reactions of susceptible youths to particular food substances.

Weekly menus should be prepared and copies should be posted and maintained centrally within the facility. All deviations from the weekly menu should be recorded.

To the extent possible, food ordering and preparation should take into consideration ethnic tastes and food preferences of the juveniles.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.16 (1977) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.6 (H) (tentative draft, 1977) [hereinafter cited as IJA/ABA, *Corrections Administration*]; and *Morales v. Turman,* 383 F. Supp. 53, 97, 100 (E.D. Tex. 1974).

Commentary

The basic level of services to which juveniles placed in training schools are entitled includes the provision of acceptable and nutritious meals that meet their physical requirements. *See* Standard 4.410. The provisions of this standard are intended to apply to all training schools regardless of whether the food is prepared on the premises or whether food is provided by an outside contractor. It is recommended that the most current edition of the "Recommended Dietary Allowances of the Food and Nutrition Board," as set forth by the National Academy of Sciences' National Research Council, should be adopted as the standard of nutritional adequacy for the meals served in the training schools. *See Report of the Task Force, supra* at Standard 24.16; IJA/ABA, *Corrections Administration, supra* at 138; American Public Health Association, *Standards for Health Services in Adult Institutions,* 92 (1976). A licensed dietician should supervise the planning and preparation of food. Such supervision is necessary to assure that a nutritionally well-balanced and varied diet is provided. The dietician should also see that food is prepared in such a way as to preserve the food's nutritional value and to maintain or enhance its flavor and palatability.

Meals should be scheduled three times a day no more than thirteen hours apart, and should be served in such a way as to minimize institutional regimentation. *See Report of the Task Force, supra* at Standard 24-16; and *Morales,* 383 F.Supp. at 97. Juveniles should not be denied food, including both regular meals and snacks, for disciplinary reasons or in conjunction with a counseling or group therapy program. *See* Standards 4.215, 4.411, and 4.53.

Personnel who are involved in the preparation of food should be adequately trained and supervised in handling, storing, cooking, and serving food so as to eliminate spoilage. Procedures regarding the cleanliness of the kitchen's facilities, equipment, utensils, and personal hygiene of the culinary staff should meet with appropriate health regulations and should be strictly enforced. Furthermore, any food prepared for consumption by juveniles should not contain any substances or additives which have been designated by the Federal Food and Drug Administration as harmful to humans. *See, e.g.,* 21 C.F.R. §81 and §189 (1977). This would require disposing of stocks which contain any of the banned substances appearing on the most recent list compiled by FDA.

Juveniles may assist in preparing meals. However, they must be properly supervised, *see Morales,* 383 F.Supp. at 97, and should not comprise the majority of the kitchen work force. Individual work assignments to the kitchen should be made in accordance with the provisions of Standard 4.49.

In addition to planning meals for the general population, the dietician should plan for individual needs as well. The dietician should be made aware of those youth who have health problems or physical conditions which require special attention to diet, including pregnant girls; juveniles who are obese or malnourished; those whose family history, symptoms, or laboratory tests indicate they have or are susceptible to diabetes; juveniles who have allergic reactions to particular foods; and those juveniles who are hyperkinetic. The dietician should discuss with these juveniles the need for a controlled, adequate diet, and develop an appropriate nutritional program.

Increasingly, diet has become the focus of medical and biological research seeking to determine the effects of food on body chemistry and behavior. Recently diet has been explored as a contributing factor in maladaptive behavior such as hyperkinesis in youth. A Ford Foundation study entitled *Health and Nutrition as Possible Factors in Juvenile Anti-Social Behavior* (1976), traces the history of research in this area. The report lists twelve studies in the field of nutrition regarding possible factors in anti-social behavior which were funded by the Ford Foundation and analyzes some of the latest research in the field including behavior disorders caused by nonnutrient substances such as artificial color and flavors. While the results of these and other studies suggest nontraditional treatment methods, they do provide evidence that eliminating certain food additives significantly reduces hyperkinetic behavior, without the use of sedative drugs. *See* C. K. Connors et. al., "Food Additives and Hyperkinesis: A Controlled Double-Blind Experiment," 58 *Pediatrics* 154, (1976); and P.S. Cook and J.N. Woodhill, "The Feingold Dietary Treatment of the Hyperkinesis Syndrome," *Australian Journal of Pediatrics*, 85-90 (1976).

Identification of individual needs requires the dietician's awareness of the developments in the field of nutrition, as it is related to health, human development, and behavior. It also requires education of and close communication with the training school staff regarding particular warning symptoms and meal schedules, and particularly close cooperation with the training school's physician and psychiatrist.

Planning of menus should be done well in advance to enable the efficient ordering and purchasing of food. To the extent possible, juveniles' religious and ethnic food preferences should be taken into consideration in planning meals. Often resident food committees can serve this function. With appropriate nutritional education, they may offer some sensible ideas for improving the food. Weekly menus should be posted, indicating what is to be served at each meal. Any changes in the menu as posted should be recorded, along with the reasons for the modifiecation and the substitute item. Furthermore, there should be only one menu for both staff and residents, with no special preferences given to staff.

In addition to human and ethical considerations, providing good food and suitable eating conditions to juveniles in training schools can help to minimize tensions and unnecessary regimentation often associated with poor institutional food and policies, and to promote an environment which fosters individual groth and development.

Related Standards

4.214	Development of a Treatment Plan
4.215	Group Counseling and Treatment Services
4.410	Right to Treatment
4.411	Denial of Enumerated Rights
4.45	Religious Freedom
4.49	Work Assignments
4.53	Loss of Privileges

4.2174 Mental Health Services

Psychiatric services in training schools should concentrate on diagnosis and training of staff who have daily contact with juveniles. Diagnosis should be utilized to determine whether the juvenile is appropriate for the training school program and to assess the juvenile's treatment needs. Staff training and consultation should be utilized primarily to assist child-care workers and other staff with direct treatment responsibilities in helping their charges through group and individual approaches.

When therapeutic mental health services are provided, the juvenile's family should be involved insofar as is possible and consistent with the needs of the juvenile. Individual therapy should only be provided if approved by the assessment team and included in the juvenile's treatment plan. Individual therapy should only be conducted by psychiatrists, psychologists who have a doctoral or masters degree in psychology, or individuals with masters degrees in social work and counseling.

All juveniles placed in training schools should be informed upon entry that they may request of any training school employee a personal consultation with either a psychiatrist or psychologist. Consultation with either a psychiatrist of psychologist, selected by the training school, should be provided as quickly as possible.

Sources:

S. Rachlin, MD, "Adolescent Psychology in Foster Care Residence: Future Directions," 39 *Mount Sinai Journal of Medicine,* 6 (1972); *Morales v. Turman,* 383 F.Supp. 53, 103 *et. seq.* (E.D. Tex. 1974); Relief Plan in *Morales v. Turman,* submitted by the Department of Justice, 47, 48, and 49.

Commentary

This standard sets out basic guidelines for the provision of mental health services in training schools. *See also* Standard 4.217 and Commentary. It embraces an indirect approach to the delivery of such services, requires family involvement in therapy, and provides the opportunity for a consultation with a mental health professional at the resident's request.

The availability of adequate mental health services is arguably a requirement of the juvenile's constitutional right to treatment. *See Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind. 1973), *accord,* 91 F.2d 352 (7th Cir.) *cert. den.,* 417 U.S. 976 (1974). *Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds,* 535 F.2d 864 (5th Cir. 1976) *rev'd and remanded,* 430 U.S.322, *remanded on rehearing,* 562 F.2d 993 (5th Cir. 1977). The Supreme Court has not addressed the question of the right to treatment for juveniles subject to family court jurisdiction however, and there is a conflict of opinion between two circuits. *See Nelson* in which the Seventh Circuit Court upheld the juvenile's right to treatment, and *Morales,* 562 F.2d at 998, which seriously questions this application of the doctrine. For a complete discussion of this issue, *see* Standard 4.410 and Commentary.

Regardless of whether they are constitutionally mandated, the guidelines for mental health services in this standard comport with minimally acceptable professional practice. *See Morales,* 383 F.Supp. at 105. There has been much criticism of the approach to corrections which assumes that all offenders are in need of psychological treatment. *See* American Friends Service Committee, *Struggle for Justice,* 34 (1971); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Corrections Administration,* 4.10(A) at Commentary [hereinafter cited as IJA/ABA, *Corrections Administration*]. Authorities agree, however, that good practice, if not the Constitution, dictates that treatment should be available for delinquents in accordance with their individual needs. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquence Prevention* (1976), Standards 24.10; IJA/ABA, *Corrections Administration, supra* at Standard 4.10(A); and S. Rachlin, MD; "Adolescent Psychology in Foster Care Residence: Future Directions," 39 *Mount Sinai Journal of Medicine* (1972).

Of course, intensive psychotherapy is not needed by most juveniles in custody, and a study has indicated that an emphasis on direct treatment is not the most effective use of the costly resource of psychiatrists' services. *See* Rachlin, *supra* at 586-91.

In an institutional setting, Dr. Rachlin found that peer group pressure and the adolescents' fear of viewing themselves as "crazy" discouraged the utilization of therapy by the residents. He recognizes the importance of treatment in preventing juvenile anti-social behavior from being carried forward into adulthood. Individual treatment he concludes, should therefore be available for the few willing to participate, and an alternative approach must be taken to provide mental health services for the majority.

This standard endorses the approach recommended by Dr. Rachlin, and limits the role of the psychiatrist. A psychiatric examination might be performed as part of the assessment process to determine the youth's treatment needs, and to see that he/she is placed into a residential unit suited to those needs. *See* Standards 4.214, 4.215 *et. seq.* 4.2171 and Commentaries. In addition, some individual and group psychotherapy can be performed by the psychiatrist. *See* Standards 4.2151 and 4.2152.

As Rachlin and others recognize, however, the most critical individuals in the rehabilitation process are the staff who are in daily contact with the juvenile in his/her day-to-day activities. *See* Rachlin, *supra* at 590; *Morales,* 383 F.Supp. at 106. The expertise of the psychiatrist can best be utilized, therefore, if he/she concentrates upon the training and assistance of the primary care staff. The necessity for pre- and inservice training of these staff people is emphasized in these standards and elsewhere. *See, e.g.,* Standard 1.425; *Morales,* 383 F. Supp. at 109-10. What this standard proposes is "an ongoing program of education addressed to the primary care givers, based on consultation to staff centering around the individuals in their care." Rachlin, *supra* at 590. This indirect service approach should maximize the benefits of the mental health services provided for delinquents in custody.

The remainder of the recommendations in this standard are drawn largely from the Relief Plan submitted by the United States to the District Court in *Morales.* This plan was based upon the views of the experts retained by the Department of Justice as *amicus* in the case, and represent the professional standards which the court deemed minimally acceptable. *See Morales,* 383 F. Supp. at 105.

As noted above, one aspect of the assessment process is a psychiatric evaluation. *See Morales,* U.S. Relief Plan, 28; *Morales,* 383 F. Supp. at 88; Standard 4.214. If therapy is prescribed, the juvenile's family is to be involved, insofar as that is consistent with the youth's rehabilitation plan. *See Morales,* U.S. Relief Plan, 49. As the District Court pointed out, the involvement of the family may be of vital importance so that the child can be evaluated in the context of his/her environment, problems of the family unit can be identified and treated, and family bonds can be maintained. *Morales,* 383 F. Supp. at 115-17.

With the indirect approach to mental health services, the counseling function will be shared by the primary care staff. *See* Standard 4.215. If individual psychotherapy is recommended, however, the standard required that it be provided only by highly trained professionals, specifically psychiatrists, psychologists with doctoral degrees, or individuals with masters degrees in psychology, social work, or counseling. Both the District Court and the U.S. Relief Plan in *Morales* recommended that these individuals have experience in working with adolescents as well as academic training. *Morales,* 383 F. Supp. at 105; *Morales,* U.S. Relief Plan, 47-48.

Finally, in addition to providing individual therapy where recommended by the assessment team, the standard requires that each juvenile in custody be informed that he/she may request a personal session with a psychiatrist or psychologist at any time. *Morales,* U.S. Relief Plan, 48-49. In this way, the facility ensures that the residents are aware of the availability of such services for those who desire them. If a juvenile makes a request, the facility administrator should select a therapist and provide the consultation as soon as reasonably possible. *Morales,* U.S. Relief Plan, 48-49.

Related Standards

1.425	Personnel Providing Direct Services to Juveniles
1.5-1.56	Records Pertaining to Juveniles
4.2122	Staff Qualifications
4.213	Services
4.214	Development of a Treatment Plan
4,215	Group Counseling and Treatment Services
4.2151	Group Therapy
4.2152	Semi-Autonomous Treatment Model
4.217	Health and Mental Services
4.2172	Responsibility Toward Patients
4.2193	Services
4.223	Services
4.263	Services
4.410	Right to Treatment

4.218 Recreational Services

Training schools should provide opportunities for exercise and constructive and entertaining leisure time activity. The opportunities should be in addition to the physical education requirements that may exist under the education laws of the jurisdiction. Activities should be balanced between individual-type and team-type activities of both indoor and outdoor varieties. At least two hours of recreation should be provided on school days and three hours on nonschool days, not including unsupervised periods spent primarily in such activities as watching television.

Source:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.12 (1976); *Morales v. Turman,* 383 F. Supp. 53, 97-100 (E. D. Tex. 1974), *rev'd on other grounds,* 535 F. 2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F. 2d. 993 (5th Cir. 1977).

Commentary

The availability of recreational and other leisure time activities is no less important for juveniles in training school than for juveniles in the community. In holding that the "opportunity for adequate recreation and exercise and constructive and entertaining leisure time activities" were constitutionally required for juveniles under the authority of the Texas Youth Council, the court in *Morales* found that adolescents, both boys and girls, "have special physical needs with respect to freedom of movement" and that especially for adolescent boys:

> It is essential . . . to have a legitimate outlet for aggression and hostility . . . when such normal channels of expression are absent, anger is apt to express itself in fighting and other forms of aggression. Unexpressed hostility may also . . . contribute to depression or even suicidal tendencies. *Morales,* 383 F. Supp. at 97, 98, and 100.

The recreation program should be designed to encourage physical development and stimulate creative expression. *See Morgan v. Sproat, 432 F. Supp. 1130 (S.D. 1977).* The standard calls for provision of a range of physical activities including indoor and outdoor team sports—e.g., basketball, volleyball, and softball—as well as indoor and outdoor individual physical activities—e.g., track, swimming, gymnastics, weightlifting, yoga, karate, and wrestling. These activities should be offered on both a competitive and a noncompetitive basis. Use of local recreational facilities and athletic competition against local teams should be encouraged to the greatest extent possible in order to provide both the community and the residents of the training school with greater opportunities for interaction, involvement, and mutual understanding. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Corrections,* 383 (1973); and R. Vinter, T. Newcomb, and R. Kish, *Time Out: A National Study of Juvenile Correctional Programs Committee,* 179-182 (1976). Outdoor recreation activities which may include field trips, should also be offered whenever feasible. *See Morales,* 383 F.Supp. at 98. These could include programs designed to develop self-confidence, teach interdependence, and challenge strength and stamina.

In addition to the need for adequate recreational opportunities based on humanitarian grounds and to reduce the level of boredom which currently exists in most large institutions, *see* Vinter, Newcomb, and Kish, *supra* at 181-182, a number of studies have indicated that vigorous exercise can reduce anxiety levels in individuals as effectively as some commonly used drugs, without the side effects. *See, e.g.,* Studies cited in "Electromyographic Comparisons of Single Doses of Exercise and Meprobamate as to Effect on Muscular Relaxation," *Research Quarterly* (1972); and K. Cooper, *New Aerobics,* 126 (1972). Although these studies have primarily focused on the elderly, they hold promise for the reduced use of such drugs as thorazine and ritalin in juvenile facilities. Additional research should be undertaken to explore the effect of the substitution of exercise programs for use of drugs as control mechnisms in training schools and other juvenile institutions.

Nonphysical recreational alternatives should include books and other reading material, board games, cards, ping pong, pool, and programs which stimulate and explore the creative talents of the juveniles housed at the facility such as music, drama, dancing, drawing and painting, photography, poetry and other forms of creative writing, ceramics, woodworking, and textile crafts, *See generally Morgan.* Nether the physical nor the nonphysical leisure time activities should be limited to those youths who display a natural ability for the particular sport or program offered. A concerted effort should be made to involve the entire training school population in one or more of the organized recreational alternatives and to encourage juveniles to experiment and explore their talents.

Volunteers from the local community should be used to assist in developing and supervising leisure time activities. Such involvement can expand the resources and creative skills available to the training school, and provide community contacts and opportunity for the juveniles.

The standard recommends that a minimum of two hours be set aside on school days and three hours on nonschool days for both physical and creative activities. *See Morgan,* 432 F. Supp. at 1154. Because of the use of television in the past as the sole form of recreation available, *see Morales,* 383 F. Supp. at 97, 98, periods of watching TV are excluded from the minimum recreational time requirements.

Related Standards

4.2112 Training School—Size and Design
4.213 Training School—Services
4.2193 Training School—High Security Units, Services
4.22 Camps and Ranches—Services
4.23 Group Homes
4.252 Foster Homes—Services
4.263 Detention Facilities—Services
4.27 Shelter Care Facilities
4.410 Rights of Juveniles—Rights to Treatment

4.219 High Security Juvenile Units

A high security juvenile unit is a specialized cottage, wing, or structure used to house juveniles adjudicated pursuant to the jurisdiction of the family court over delinquency, who cannot be controlled within a regular training school living unit. Juveniles may be transferred to the secure unit at the time of admission, or subsequently, when it is determined, pursuant to the procedures set forth in Standard 4.71 that the juvenile poses a substantial threat to safety. High security units should not be used as orientation, reception, or diagnostic centers.

The design and location of, and the procedures utilized in a high security unit should balance the need to provide security for the community, staff, and juveniles placed therein, and the need to provide a reasonable quality of life including the services described in Standards 4.114 through 4.118 and Standard 4.2193.

Source:

None of the standards or model legislation reviewed addressed this issue directly. *See generally* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Architectural Standards for Group Homes and Secure Detention and Corrections Facilities,* Standard 6.1 (draft, 1976).

Commentary

This standard recommends the guidelines to be used in operating a high security juvenile unit. The high security unit is meant to be part of a training school, *see* Standard 4.21, and should only be used if the juvenile cannot be controlled within a regular training school living unit. "Controlled" is used in the sense that the juvenile presents a substantial threat to the safety of the community, staff, and other residents. As with all training school placements, only those committed as delinquents may be placed in high security units. *See* Standards 3.183 and 3.184.

The National Advisory Committee considered two options with regard to security. The first option would have required the creation of special high security juvenile facilities that would provide security at a level higher than that offered at training schools. The arguments in favor of separate facilities include (1) the fear that in the absence of such facilities, training school secure units would be viewed as providing inadequate community protection, thereby increasing the likelihood of legislation transferring juveniles who have committed violent offenses to adult corrections facilities; (2) the possibility of greater availability of funding and services for separate facilities; and (3) the possibility that the existence of a high security program at a training school would lead to greater security restrictions being imposed on the entire population. The second option was to authorize training schools to develop in-house specialized high security units to provide this service. The second option was chosen with the belief that if a separate high security juvenile facility category was established, it would lead to the creation of a single statewide secure juvenile facility, far removed from the juveniles' home communities and offer diminished opportunities for transfer to more open programs. Members of the committee were of the opinion that if the standards for high security units were followed, the arguments for separate facilities could be addressed without creating the problems resulting from their establishment.

A juvenile may enter a high security unit in one of two ways. A judge of the family court may place him/her there at a dispositional hearing, *see* Standards 3.181 and 3.182, or a facility administrator may petition the family court for a transfer to the unit from the general training school population. *See* Standard 4.71. In either case, the juvenile must pose a substantial threat to safety and be untreatable in a less secure placement. As are all the National Advisory Committee standards regarding juveniles, this standard is predicated on the philosophy that the least restrictive setting necessary should be employed. *See* Standard 4.410 and Commentary. Consequently, the use of high security units should be seen as an exception rather than the rule. Once a decision is made that a separate unit is necessary to provide stricter security for certain juveniles, the state agency has a duty to make the secure unit as liveable as possible and to provide needed habilitation. Adherence to the right to treatment philosophy is very crucial in high security units since

> ". . .[W]ithout a progam of individual treatment, the result may be that the juveniles will not be rehabilitated, but warehoused, and that at the termination of detention they will likely be incapable of taking their proper places in free society; their interests *and those of the state and school* thereby being defeated." (emphasis added) *Nelson v. Heyne,* 491 F.2d 352, 360 (7th Cir.), *cert den.* 417 U.S. 987 (1974).

The unit should not be noticably different from other buildings in the surrounding area. The Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Standards, *Standards Relating to Architecture of Facilities,* Standard 6.5 (1977) [hereinafter cited as IJA/ABA, *Architecture of Facilities*]. suggests that this will reassure the juveniles that even though they have been found to need greater security, they will still be "treated with respect, permitted to retain their dignity, and encouraged to form a positive self image . . ." *Id.* at Commentary. All services needed to provide a reasonable quality of life for the juvenile should be provided. *See* Standards 4.214-4.218, 4.41-4.411, and 4.2193.

The IJA/ABA draft *Architectural Standards, supra* at Standard 6.1 *et. seq.* discusses the quality of life which should be provided for the juvenile. The settings should be attractive, pleasant, and as homelike as possible. Individual living areas should be adjustable to suit personalities, provide security for possessions, and places for group meetings, reading, or solitude. The need for space and privacy is more urgent in the high security unit than it is in the rest of the training school due to the increased rigidity of the rules and the greater limitations on freedom of movement. *See* IJA/ABA, *Architecture of Facilities, supra* at Standard 6.16. The units should be constructed so that they may accommodate handicapped persons who reside in them and those who will need access for visitation or treatment purposes. *Cf.* 45 C.F.R. §84.4.

As indicated in the Commentary to Standard 4.21, intensive staffing should be preferred over physical barriers and mechanical devices as the means to insure the safety of the community, residents, and staff. This remains true within high security units as well as in other units and facilities. Finally, because of their more restrictive nature, high security units should not be used for orientation, reception, or diagnostic centers. The unit has a specific limited purpose for a limited number of juveniles. It should not be used for other purposes.

This standard sets the groundwork for the standards which follow. Most of the items mentioned in this standard are explained indepth in Standards 4.2191-4.2194.

Related Standards

3.181	Duration of Disposition and Type of Sanction—Delinquency
3.182	Criteria for Dispositional Decisions—Delinquency
4.186	Predisposition Investigations
4.187	Predisposition Reports
4.188	Dispositional Hearings
4.21	Training Schools
4.211	Training Schools—Physical Characteristics and Population
4.212	Training Schools—Staff
4.213	Training Schools—Services
4.214	Development of a Treatment Plan
4.215	Group Counseling and Treatment Services
4.216	Educational Services
4.217	Health and Mental Health Services
4.218	Recreational Services
4.219	High Security Units
4.2191	Size
4.2192	Staff
4.2193	Services
4.2194	Security
4.41-4.411	Rights of Juveniles
4.51-4.53	Discipline
4.61-4.63	Use of Restraints
4.71-4.73	Transfer Procedures
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.2191 Population and Size

A high security unit should serve no more than twenty juveniles in a structure. No living unit within the structure should exceed ten, and the utilization of co-educational secure programs should be encouraged in order to foster normalization.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Architectural Standards for Group Homes and Secure Detention and Corrections Facilities,* Standards 3.1 and 6.3, and *Proposed Standards Relating to Correctional Administration,* Standards 4.9(b) (vi) and 7.5 [hereinafter cited as IJA/ABA, *Corrections Administration*] (draft, 1976).

Commentary

This standard, like Standard 4.2112 relating to training schools generally, requires that no more than twenty persons be housed in each unit and that the units be co-educational. This standard reinterates that high security units should only be different in ways that relate to the need for increased security. The secure features of the unit are discussed in Standard 4.2194.

As previously noted in Standard 4.2112, size has a strong impact on the quality of treatment plans. The smaller the unit and staff/juvenile ratio, the more likely that an intimate, caring and normal environment will be created. It is crucial that the youths housed in high security units be habilitated in an environment which is as close to normal as possible. The court in *Morgan v. Sproat,* 432 F. Supp. 1130, 1149 (S.D. Miss. 1977), a case concerning the conditions in the intensive treatment unit of a juvenile facility, accepted expert testimony regarding the necessity of space and privacy:

> "There are certain types of emotional and/or behavior problems for which therapeutically a certain amount of privacy is indicated if you're going to have a positive therapeutic effect . . . [f]or the most part, adolescents who get to [places like training schools] have had a background which has been lacking in many of what most people would consider to be the normal socio-cultural attributes of living . . ." *Id.* at 1149, fn. 41.

By providing juveniles with a living environment which strives to individualize and normalize, "It gives a measure to them that they are worth something to other people." Id.

The actual high security unit within the training school facility should house no more than twenty persons. *See* Standard 4.2112; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.2 (1976) [hereinafter cited as *Report of the Task Force*]; IJA/ABA, *Corrections Administration, supra* at Standards 7.2. The IJA/ABA standard attempts to analyze why the number twenty was chosen as the maximum size. It seems that there is no hard data on the relationship of minimal size for adequate training or rehabilitation. *Id.* at Commentary. However, the IJA/ABA Joint Commission found that there is unanimous management support for the belief that a living unit size of between 18-25 is optimum since beyond that limit, the simple "logistics of many people about defeats the intent of the program to normalize rather than regiment." *Id.* "Scheduling, controlling, feeding, moving, supplying, equipping, and meeting timetables for large groups imposes depersonalization on staff and resident alike and negatively influences the relationship of staff to resident, resident to staff, staff to staff, and resident to resident." *Id.*

Within the secure unit itself, the standard permits no more than ten juveniles to be grouped together in individualized living units. This is an attempt to further reduce the institutional atmosphere at the high security unit. This is not meant to eliminate the provision in Standard 4.2112 for a mixture of private and semi-private rooms. Whenever feasible, there should be a preference for single rooms. As noted by the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Architecture of Facilities,* Standard 6.16 (1976) [hereinafter cited as IJA/ABA, *Architecture of Facilities*], the recommended size limits are generally smaller than those currently employed. Understandably cost factors come into play, but this should be balanced against the danger of the predictable response to stress factors generated by overcrowding. *Id.* at Commentary. As noted in the Commentary to Standard 4.2112, use of room assignments may be part of a reward system, but should not be arbitrarily abused. *See also* Standard 4.53 and 4.54. Preserving the personal integrity of a juvenile during his/her period of confinement in the high security unit is essential if proper rehabilitation is to occur. Small units and individual rooms will assist in achieving this goal.

Standard 4.2113 and its Commentary discuss the benefits of co-education in a training school. The imposition of a more secure living unit does not take away the necessity to foster normalization. It is recognized that heterosexual contact and experiences are necessary to the proper socialization of a youth. The *Report of the Task Force, supra* at Standard 24.1, and the IJA/ABA, *Corrections Administration, supra* at Standard 7.5 are both in agreement with this provision. These same considerations suggest that the high security unit should also be used for both males and females. They should not share the same living unit, but should be able to mingle with each other in their everyday activities. *See Gary W. v. State of La.*, 437 F. Supp. 1209, 1224 (E.D.La. 1976). The only exception to this requirement should be where the assessment team (Standard 4.2141) responsible for a child's treatment plan suggest otherwise. *Gary W.*, 437 F. Supp. at 1224.

Related Standards

4.21	Training Schools
4.2111	Location
4.2112	Size and Design
4.2121	Staff Size
4.213	Services
4.214	Development of Treatment Plan
4.219	High Security Units
4.2192	High Security Units—Staff
4.4193	High Security Units—Services
4.221	Camps and Ranches—Size
4.231	Group Homes—Size
4.26	Detention Facilities—Size
4.4-4.411	Rights of Juveniles
4.51-4.53	Discipline
4.61-4.62	Use of Restraints
4.71-4.73	Transfer Procedures
4.81	Grievance Procedures

4.2192 Staff

The staffing pattern and qualifications of the treatment staff for secure units should be similar to that set for training schools in Standards 4.2121 and 4.2122 except supervision and treatment staff of a high security unit should be proportionately larger. At a minimum, each living unit of ten juveniles should include:

- **a. Three (3) child-care workers on duty during waking hours and two (2) child-care workers on duty during normal sleeping periods;**
- **b. One (1) child-care supervisor;**
- **c. One (1) caseworker; and**
- **d. One (1) recreation worker.**

Staff for a twenty-bed secure structure should also include at least one full-time psychologist, and one teacher for every ten residents with teachers' aides as needed. Structures with fewer than two living units should adjust staff proportionately so as to maintain, to the extent possible, the services and ratios set forth above.

Source:

See generally Aggressive/Violent and Disturbed Adolescent Demonstration Project, submitted by New York State Division for Youth to N.Y.S. Division of Criminal Justice Services on Dec. 3, 1974 (Proposal #1867, Grant C84747).

Commentary

This standard outlines the staff requirements for the high security unit. In keeping with the recommendation in Standard 4.2121 concerning training schools generally, that the staff be appropriate for the care, treatment, and supervision of the juveniles placed in the training school, this standard recommends that a higher ratio of supervision and treatment staff to children be implemented in high security units.

This standard requires, at the minimum, the following persons be on duty for each living unit of ten:

- a. Three child-care workers during working hours (the requirement for the general population is one per ten juveniles), *see* Standard 4.2121(e);
- b. Two child-care workers during sleeping hours (the requirement for the general population is one per twenty juveniles), *id.* 4.2121(f);
- c. One child-care supervisor (there is no provision for this position in the general population);
- d. One caseworker (the requirement for the general population is one per twenty juveniles), *id.* 4.2121(d); and
- e. One recreation worker (no such worker is provided for the general population).

For each twenty-bed structure there should also be:

- a. One full-time psychologist (the ratio is 1:100 in the general population), *id.* 4.2121(b); and
- b. One teacher for each ten residents (the ratio is 1:12 in the general population), *id.* 4.2121(i).

The staffing ratio recommended for the most secure juvenile facilities reflects an awareness that the violent propensities and degree of disturbance exhibited by children in such progams requires substantially more staff than that proposed for training schools in *Morales v. Turman*, 383 F. Supp. 53 (1974) *rev'd on other grounds*, 535 F.2d. 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d. 993 (5th Cir. 1977). It is recognized that "youths held in secure facilities are often in a tense or unsettled mental state which may lead to displays of anger, tension, loss of self control, frustration, impertinence, or violence directed toward staff, other residents, their parents, or society." Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Architecture of Facilities*, Standard 6.2 (1977) [hereinafter cited as IJA/ABA, *Architecture of Facilities*].

The emphasis in the secure unit should be on positive staff-resident relationships. American Correctional Administration, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services, Note* p. 56 (1976); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 24.3 (1976) [hereinafter cited as *Report of the Task Force*]. There should be a "supportive" security system as suggested by the IJA/ABA, *Architecture of Facilities, supra.* Staff should be well-trained and knowledgeable as to their role. *See* Standard 1.425 and Commentary. For the most part, children in the high security unit will need to experience positive adult relationships and be able to see adults as positive role models. *Report of the Task Force, supra.* Although many experts disagree on the therapeutic value of secure detention, they do agree that if the tone of the units is such that a child feels that the staff is concerned about him/her, treatment can be provided. *Martarella v. Kelley*, 349 F. Supp. 575, 586 (S.D.N.Y. 1972), *enforced in* 359 F. Supp. 478 (S.D.N.Y. 1973).

The staff is crucially important to the proper treatment of the juveniles:

> "The concept of treatment as a constitutional *quid pro quo* for the state's right to detain those not guilty (or accused) of crime—children, the mentally ill, for example—involves the

delivery of therapeutic services—services which must emanate from the staff. Treatment in this sense goes beyond good will and kindness, although those virtues may be indispensible to the success of the therapy." Id at 586.

Although no one source can provide the absolute minimum proportion of staff to resident, there is general agreement that the ratio must increase greatly from that used in the general training school population. (Standard 4.2121). The courts have determined that regardless of the amount of security, the institution's entire program must be geared to meet the individual needs of each student. *Nelson v. Heyne,* 491 F.2d 352, 360 (7th Cir.), *cert. den.* 417 U.S. 987 (1974), *Morgan v. Sproat,* 432 F. Supp. 1130, 1140 (S.D. Miss. 1977). In order to accomplish this goal, there must be a sufficient number of qualified professional and support personnel in each unit. *supra.*

The adequacy of the relationship between staff and residents depends heavily on their knowledge of each other. The staff must know the background and special needs of each child in their care in order to provide the services required. This is especially true if the child is handicapped in addition to his/her other problems. *See Martarella,* 349 F. Supp. at 590. *See* Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794 (1974); P.L. 94-142, codified at 20 U.S.C. 1401 *et. seq.* By keeping the ratios small, the staff will have more time to learn and understand the problems of the children. The juveniles in turn will develop greater trust for the staff if they are perceived as truly interested in the juvenile's welfare.

Related Standards

1.41	Personnel Selection
1.425	Personnel Providing Direct Services to Juveniles
1.426	Educational Personnel
4.11	Role of the State
4.21	Training Schools
4.2112	Training Schools—Size and Design
4.2121	Training Schools—Staff Size
4.2122	Staff Qualifications
4.213	Training Schools—Services
4.2141	Training Schools—Assessment
4.2142	Treatment Plan
4.215	Group Counseling and Treatment Services
4.2151	Group Therapy
4.2152	Semi-Autonomous Treatment Model
4.216	Educational Services
4.2161	Academic Education
4.2162	Vocational Education
4.2163	Special Education
4.217	Health and Mental Health Services
4.2171	Initial Health Examination and Assessment
4.2174	Mental Health Services
4.219	High Security Juvenile Units
4.2191	Population and Size
4.2193	High Security Units—Services
4.41-4.411	Rights of Juveniles
4.51-4.53	Discipline
4.61-4.62	Use of Restraints
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.2193 Services

The range of services provided in high security units should be comparable with that of regular training school living units, with additional resources to permit smaller class size and individual education, increased recreational opportunities, and psychiatric screenings to determine whether a juvenile should be considered for transfer to a mental health program in accordance with the law.

Source:

See generally Aggressive/Violent and Disturbed Adolescent Demonstration Project, submitted by New York State Division for Youth to N.Y.S. Division of Criminal Justice Services on Dec. 3, 1974 (Proposal #1867, Grant C84747).

Commentary

This standard incorporates the provision of all of the services delineated in Standards 4.213 to 4.218 concerning the general training school population and adds additional requirements for juveniles restrained in the high security unit. Not only must the training school provide the basic educational, medical, and dental services required by the 'right to rehabilitation and treatment' rulings, *see Wyatt v. Stickney,* 325 F. Supp. 781 (1971) *aff'd* 334 F. Supp. 1341 and 344 F. Supp. 373 (M.D. Ala. 1972), *aff'd sub. nom., Wyatt v. Aderholt,* 503 F.2d 1305 (5th Cir. 1974); *Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974) *rev'd on other grounds,* 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F.2d. 993 (5th Cir. 1977); *Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind. 1972) *aff'd,* 491 F.2d. 352 (7th Cir.), *cert. den.,* 417 U.S. 987 (1974); *Inmates of Boys Training School v. Affleck,* 346 F. Supp. 1354 (D.R.I. 1972), but in keeping with the idea of individualized treatment plans, *see* Standard 4.2142; *Morgan v. Sproat,* 432 F. Supp. 1130 (S.D. Miss. 1977), this standard proposes that the high security units need, and should have, smaller classrooms, increased recreational opportunities, and psychiatric screenings to meet the special needs of children housed in them.

Courts have uniformly prohibited the use of juvenile high security facilities which deny residents the programs and services which are given to the general training school population. *Morgan,* 432 F. Supp. at 1139; *Inmates; Lollis v. New York State Department of Social Services,* 322 F. Supp. 473 (S.D.N.Y. 1970); and *Nelson.*

Despite any evidence of corporal punishment or physical abuse, the court in *Inmates* ordered the high security unit closed because:

> [t]o confine a boy without exercise, always indoors, almost always in a small cell, with little in the way of education or reading materials, and virtually no visitors from the outside world is to rot away the health of his body, mind, and spirit. Id. at 1365-66.

The *Morgan* court noted that while some juveniles do need to be confined to more secure facilities, they must nevertheless be provided with adequate services.

> ". . . [it is] clear that some students need more secure arrangements, but they still must receive the full range of treatment services under the more secure conditions. This has been done in South Carolina and in Louisiana, where students needing secure facilities are assigned for all or most of their commitments to maximum security units where they receive a full range of *intensive* treatment programs on a regular basis . . ." *Morgan, supra* at fn. 11.

Acknowledging that residents who are placed in high security may have special problems, *see* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Architecture of Facilities,* Standard 6.2 (1977) and Commentary; American Correctional Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services, Note* p. 56 (1978); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.3 (1976) and Commentary, this standard recommends psychiatric screening in order to discover problems as soon as possible. If counseling and general therapy are insufficient and commitment is necessary, the juvenile should be transferred in compliance with Standards 4.2174 and 4.73. The high security unit should not be used merely to contain hostile behavior when it is the result of severe psychiatric problems.

Related Standards

4.213	Training Schools—Services
4.214-4.2142	Development of Treatment Plan
4.215-4.2152	Group Counseling and Treatment Services
4.216-4.2163	Educational Services
4.217	Training Schools—Health and Mental Health Services
4.218	Recreational Services
4.219	High Security Juvenile Units
4.2191	Population and Size
4.2192	Staff
4.41-4.411	Rights of Juveniles
4.51-4.54	Discipline
4.61-4.62	Use of Restraints
4.73	Transfers Among Agencies
4.81-4.82	Grievance Procedures and Ombudsman Programs

4.2194 Security

The primary security strategy should be a high youth-staff ratio with emphasis upon positive youth-staff relationships. Security should be flexible in order to allow increased and decreased security according to the risks at a given time. Interior security hardware should be as unobtrusive as possible to maximize normalization in living areas. High security units may be self-contained and perimeter security may be used in order to encourage greater freedom of movement with the unit. Room confinement, if necessary, should be in the juvenile's own room whenever possible. If separate confinement rooms are required they should be located away from the bedroom section of the facility, should be in areas of maximum staff activity, and should contain a minimum prescribed level of environment amenities.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Architecture for Group Homes and Secure Detention and Corrections Facilities,* Standards 3.4, 6.1, and 6.10 and Commentary (draft, 1976).

Commentary

This standard recommends the permissible boundaries of security in high security units. Instead of punishment, placement in a high security unit should afford the juvenile more attention and a better chance to establish interpersonal relationships with older persons. By providing a high youth-staff ratio, more security is provided without unduly restricting the juveniles. *See* Standard 4.2192 and Commentary.

The level of security in these units should be flexible enough to permit the use of the least restrictive environment necessary at any given time. Additional "hardware" necessary to provide a more secure environment should not be obvious if possible. There should be a preference for high outside security rather than overbearing rigidity within the living units. From the outside, it should be clear to the juveniles that they are in a high security unit and that absconding will be prevented. However, within the unit there should be an effort to maximize normalization and encourage greater freedom of movement. If separate confinement rooms are necessary for disciplinary purposes, they should be located away from the bedrooms and in an area of maximum staff activity. All of the requirements of Standard 4.52 and 4.54 must be met before placing a juvenile in room confinement.

It is generally acknowledged that the use of secure facilities is needed to control some youths. *See* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Related to Architecture of Facilities,* Standard 5.1 (1977) [hereinafter cited as IJA/ABA, *Architecture of Facilities*]; American Corrections Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services,* Standard 8281 *et.seq.,* (1978) [hereinafter cited as *Manual of Standards*]; and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 24.2 and 24.3 (1976) [hereinafter cited as *Report of the Task Force*]. However, as the IJA/ABA Joint Commission points out, placement in a secure setting should be the last resort. If placement in a secure facility is found to be necessary, then it is the responsibility of the training school administration to attempt to rehabilitate the youth and remove him/her from high security as soon as possible.

The level of security should be flexible and easily amenable to either low or high demand situations. This may be accomplished by the use of strong outdoor security and the use of versatile indoor hardware. More importantly, there should be a supportive system of security which is capable of imposing strict limitations on a juveniles' freedom of movement, but also capable of encouraging normalization and a degree of autonomy commensurate with the juveniles' ability to handle that responsibility. The IJA/ABA, *Architectural Facilities, supra* suggests alternative security measures that are consistent with those recommended in this standard. *See* Standards 5.1, 5.12, 6.1, 6.2, and 6.17. Among the most important areas noted by the IJA/ABA Joint Commission are:

A. *Use of staff—programming to provide needed security.* It is suggested that there be utilization of a high staff-youth ratio, with flexibility in programming sufficient to impose more rigid controls during incidents or periods of sustained unrest. *Id.* at Standard 5.1. Hidden body alarms for all staff working in secure settings is suggested, as well as emergency alarm devices in each juvenile's room for use if the youth feels in danger of assault. *Id.* Glass-enclosed control and observation centers should be avoided. *Id.*

B. *Use of least oppressive inside "hardware" to promote normalization.* Provisions should be made for moveable furniture in most bedrooms and activity areas with the option of changing youths to a setting with fixed furniture, or of removing moveable items. *Id.* at Standard 5.1. Residents should have keys to their rooms to ensure the safety of their personal possessions.

Latches should be placed on the inside of bedroom doors to enable youths to lock themselves in if threatened. Staff master keys would override the inside latch. *Id.* at Standard 6.1. Observation panels in bedroom doors should be utilized whenever possible. Toilets and wash basins should be provided in each bedroom to ensure privacy and enable staff to isolate disruptive youths in their own rooms. *Id.*

Provisions for air conditioning and utilization of high-strength glass in windows should be used to avoid use of bars. *Id.* at Standard 5.1. If this is not possible, it is suggested that windows with opening units one foot wide, having a center pivot be utilized. In either case, provision should be made for security against unauthorized departures from the facility without requiring bars or the appearance of a security window. *Id.* at Standard 5.12.

C. *Encouragement of Normalization.* Visiting hours should be liberal to encourage continued contact between the juvenile and relatives and friends. Provisions should be made to allow working parents to visit before or after their work shifts. *Id.* at Standard 6.17. Access to telephones should be available between the hours of 9am to 9pm. A varied choice of activities in education, arts and crafts, sports, and leisure should be provided. *Id.* at Standard 6.2. Locks should not be placed on doors leading to recreational areas or general restrooms. *Id.* at Standard 6.17.

Implementation of the above should lead to the avoidance of the use of stringent security measures at all times against all persons. It will also encourage normalization, projection of a positive self-image by a youth, positive relationships between youths and staff, and the elimination of buildings that by their design encourage youths to react in a destructive manner. *Id.* at Standard 5.1.

There is a very strong trend toward the use of staff rather than mechanical devices for security purposes. The *Manual of Standards, supra* Standards on Security and Control, notes that "the greatest degree of security for staff and juveniles is achieved through positive relationships between these groups." *Id.* at 56. The staff should also be aware that they are adult role models. Preservice and inservice training should emphasize how to best utilize this in aiding rehabilitation. *See Report of the Task Force, supra* at Standard 24.3. The role and qualifications of staff are further discussed in Standard 4.2192. *See also* Standards 1.41 and 1.425.

There should be written policies regarding the rules and regulations to be enforced against or on the behalf of the juvenile. *See* Standard 4.47. Written policies should be in the language spoken by the juvenile and a braille copy should also be available. For those children unable to read, the rules and regulations should be explained verbally so that the juvenile understands their meaning. Staff should also be prepared to re-explain rules and regulations upon request. If a juvenile is not able to comply with the rules, loss of privileges may result after the proper procedures are followed. Standard 4.53 and 4.54.

If a juvenile's action is such that he/she threatens the safety of the staff or of other residents, he/she may be placed in room confinement pursuant to Standards 4.52 and 4.54. When room confinement is required, a juvenile should be placed in his/her room whenever possible. If separate confinement rooms are necessary, they should be located away from the bedroom section of the facility and in an area of maximum staff activity so that the juvenile may be checked regularly, *see* Standard 4.52, and that the juvenile's peers will not see him/her in a punitive and humiliating situation. IJA/ABA, *Architecture of Facilities, supra* at Standard 5.10. The IJA/ABA, *Architecture of Facilities, supra* at Standard 5.10 also suggests that locating a confinement room in the staff area would discourage routine use of the room and would prevent confined juveniles from disrupting the daily routines of other residents. If used, the confinement rooms must have the minimum prescribed level of environmental amenities and services. *See* Standard 4.52 and Commentary. *See also* Standard 4.411.

Related Standards

1.41	Personnel Selection
1.425	Personnel Providing Direct Services to Juveniles
4.219	High Security Juvenile Units
4.2191	Population and Size
4.2192	Staff
4.2193	High Security Units—Services
4.41-4.411	Rights of Juveniles
4.51-4.54	Discipline
4.61-4.62	Use of Restraints
4.71-4.73	Transfer Procedures
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.22 Camps and Ranches

Camps and ranches are rurally located, nonsecure facilities used to house juveniles adjudicated pursuant to the jurisdiction of the family court over delinquency, which have a programmatic emphasis on outside activity such as conservation, agriculture, or community service projects.

Source:

See generally California Youth Authority, *Standards for Juvenile Homes, Ranches, and Camps* (1972); New York State Division for Youth, *New Paths for Youth* (1974).

Commentary

This standard recommends the utilization of rurally located, nonsecure camps and ranches to house juveniles adjudicated delinquent by the family court. *See* Standard 3.182. The Department of Youth Authority in California defines such camps as "outdoor work programs in minimum security settings." California Department of Youth Authority, Research Report No. 53, *Forestry Camp Study* (1967) [hereinafter cited as *Forestry Camp Study*]. Although the exact theory behind such camps is vague, the camp environment is supposed to facilitate the rehabilitation of youthful offenders by utilizing a healthful and pleasant setting, small numbers of people and close contact between staff and residents to instill good work habits. *Id.* at 3. The facility encourages self-development, provides opportunities for reform, and secures classification and placement of juveniles according to their capabilities. California Department of Youth Authority Regulation 15-4341 [hereinafter cited as California Youth Authority Regulations].

The camps and ranches recommended by this standard require a programmatic emphasis on outside activity, basic self-discipline and the development of vocational and interpersonal skills. While it cannot be shown that camps and ranches lower recidivism rates more significantly than other facilities, the National Advisory Committee believed that some juveniles could benefit from this particular form of placement. Adjudicated delinquents who live in rural areas are proper candidates for camp or ranch placements. So, too, are those urban dwellers who are not in need of secure placement but for whom community contact is undesirable.

The camp provides a setting for juveniles to develop good habits, learn to work, and develop certain skills. Further, residents perform useful and necessary work that benefits the community in general. These standards adopt a position that work is a valuable and important learning experience for juveniles and "an integral part of a rehabilitation program." *See* Standard 4.49 and Commentary. *See also* Institute of Judicial Administration/American Bar Association Joint Commission on Standards, *Standards Relating to Corrections Administration,* Standard 4.14 and Commentary (1977). As such, camps and ranches should be available for those children for whom they will be a benefit.

Camps and ranches carrying on conservation, agricultural, or community service projects on public lands should integrate those projects with the work program of established public agencies. The responsibilities of each agency and its staff should be outlined in an agreement that identifies working hours, conditions, wages, specific projects expected to be accomplished, meal, and transportation arrangements. Since responsibility for the work project ultimately lies with the conservation or other public works agency, selected agency personnel should be headquartered in the camp to direct work operations. The camp or ranch, however, should remain responsible for the care and treatment of the juveniles placed therein. *See generally* California Youth Authority Regulations.

Like programs in other residential facilities, programs of the camps and ranches should be evaluated to ensure the utility and appropriateness of the programs and personnel. *See* Standard 1.125. As with all other residential programs, the rights established by these standards are applicable to camps and ranches.

Related Standards

1.125	Evaluation of Local and State Efforts
3.182	Criteria for Dispositional Decisions—Delinquency
4.11	Role of the State
4.221	Camps and Ranches—Size
4.222	Staff
4.223	Services
4.41-4.411	Rights of Juveniles
4.51-4.54	Discipline
4.61-4.62	Use of Restraints
4.71-4.73	Transfer Procedures
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.221 Size

A camp or ranch should house no more than twenty juveniles.

Source:

See generally Discussion of facility size in the Commentary to Standard 4.2112.

Commentary

This standard recommends that a camp or ranch house no more than twenty juveniles. As has been said many times throughout these standards, size is an important factor for developing a normal atmosphere within a residential facility, enhancing the personal integrity of a juvenile, facilitating rehabilitation and permitting a facility to function smoothly. *See,* e.g., Standards 4.2112, 4.2191 and Commentaries. The fact that camps and ranches are located in a rural setting does not alter these considerations.

The number twenty reflects a consensus among management staff regarding the maximum number of residents for a nonsecure facility. As such, it was chosen by the National Advisory Committee as the maximum for camps and ranches. Because they will be conducting programs designed to impart specific skills and to complete specific tasks, a small number of participants is even more essential than in other facilities. Supervision and training cannot be effectively conducted in camps and ranches if large numbers of juveniles are present. Individual instruction by skilled workmen is necessary if an occupation is to be learned. Additionally, the projects of camps and ranches are likely to involve some tasks which involve danger if performed recklessly and to utilize tools which are dangerous if improperly used. To avoid accidents and to develop skills, only a small number of juveniles should reside at the camp or ranch.

Related Standards

4.11	Role of the State
4.2112	Training Schools—Size and Design
4.2191	High Security Units—Size
4.22	Camps and Ranches
4.222	Staff
4.223	Services
4.231	Group Homes—Size
4.261	Detention Facilities—Size

4.222 Staff

Camps and ranches should have the staff necessary to provide for the care, treatment, and supervision of the juveniles placed therein. Appropriate work supervision should be provided by the cooperating conservation, agriculture, or community service agency.

At a minimum, camps and ranches should have one caseworker per twenty juveniles, and one teacher per ten juveniles who attend school at the camp rather than at the local public schools. In addition, there should be at least two child-care workers on duty at all times. Other professionals should be employed on a full-time, part-time, or consultative basis as may be necessary to meet the needs of individual residents.

The minimum qualifications for these positions should be the same as those set forth in Standard 4.2122, except that all child-care workers should have current advanced first-aid training in addition to the educational and employment experience described in Standard 4.2122(d).

Sources:

See generally California Youth Authority, *Standards for Juvenile Homes, Ranches, and Camps,* (1972); *Morales v. Turman,* 383 F. Supp. 53, 85-88 (E.D. Tex. 1974); Relief Plan submitted by plaintiff and counsel in *Morales v. Turman for amici,* at 12-17.

Commentary

This standard recommends that camps and ranches be adequately staffed with qualified people. At a minimum, the camp or ranch should have two child-care workers on duty at all times. Child-care workers should have at least a high school degree or its equivalent and have completed at least one full year of work with adolescents in the community or in other residential facilities. *See* Standard 4.2122 and Commentary. Because of the rural location of the camp and because of the nature of the work performed there, child-care workers should also be trained in first-aid techniques. *See also* Standard 1.425 and Commentary. When juveniles are unable to attend local schools because of the location of the camp or ranch, one teacher per ten residents is recommended. Teachers should possess the same qualifications as those teaching in the public schools. One caseworker possessing a bachelors degree with courses in social work, psychology, or behavioral sciences and one year's experience working with juveniles should also be available. *See generally* California Youth Authority, *Standards for Juvenile Homes, Ranches, and Camps* (1972).

Camps and ranches are unique in terms of their rehabilitation program. Because of the nature of the program, the standard recommends that the conservation, agriculture, or community service organization provide the staff supervision for its projects. It is unrealistic to assume that staff trained in the child-care professions will also be trained to supervise particular forms of work programs. Since the state youth agency still maintains an ultimate supervisory responsibility for the operation of the camps or ranches, *see* Standard 4.11, cooperative agreements between agencies are contemplated. *See also* Standard 4.22. It is the responsibility of both agencies to insure that the work supervision staff is adequate to perform the tasks set forth and to instruct the juveniles assigned to the programs. *See* Standard 1.125.

Because of the rural location of the facility and because the number of residents is small, the standard does not envision that a full range of services will be provided on-site. However, the facility should contract for consultive services generally and retain full-time assistance when warranted. This does not, however, lessen the states' duty to individually assess each child's needs and to provide for them. *See* Standard 4.223. If a child's needs cannot be met in a camp or ranch, he/she should not be placed there. *See* Standard 4.223 and Commentary.

The quality of a program's staffing is not measured solely by specific qualification requirements or numbers of staff. Sustaining quality is an ongoing process. Staff members should be properly oriented to their duties and to the rules of the camps and ranches. Inservice training must also be required. *See* Standard 1.425. Such training will lead toward more professional growth for the staff and a better understanding of child development and behavior.

Related Standards

1.125	Evaluation of Local and State Efforts
1.41	Personnel—Selection
1.425	Personnel Providing Direct Services to Juveniles
4.11	Role of the State
4.2121	Training Schools—Staff Size
4.2122	Training Schools—Staff Qualifications
4.2192	High Security Units—Staff
4.22	Camps and Ranches
4.221	Size
4.223	Services
4.232	Group Homes—Staff
4.262	Detention Facilities—Staff
4.82	Ombudsman Programs

4.223 Services

Camps and ranches should offer a broad range of services including, but not limited to, the specific service areas described below.

A treatment plan should be prepared jointly by each juvenile and his/her assessment team. Each assessment team should be composed of a child-care worker, a caseworker and a teacher. The plan should provide a structured schedule of activities, counseling, and education, but should not involve intensive psycho-therapy since juveniles with deep-seated emotional or psychological problems should be treated at facilities closer to community resources.

The primary emphasis of the treatment strategy of a camp or ranch should be on a work-oriented program. However, remediation resources should be available to juveniles requiring special academic attention as an adjunct to their vocational training experience.

Camps and ranches should have contractual relationships with local physicians and hospitals for the delivery of medical and dental needs which cannot be fulfilled by the staff. These arrangements should include screening and assessment of incoming juveniles, 24-hour emergency care procedures and routine medical care procedures. Each camp or ranch should have a written medical care plan detailing by name and telephone number the person or institution to be contacted for each category of medical care.

Sources:

California Youth Authority, *Standards for Juvenile Homes, Ranches, and Camps* (1972).

Commentary

This standard recommends that camps and ranches offer a broad range of services to the residents through a combination of on-site and contractual programs. Included in these services are treatment plans, with a primary emphasis on work, remedial education, and medical and dental services.

The treatment plan required by this standard should be developed immediately or at least within fifteen days of the juvenile's admission to the camp or ranch. *See* Standard 4.214 and Commentary; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 23.3 and Commentary (1976) [hereinafter cited as *Report of the Task Force*]; and *Morales v. Turman*, 383 F. Supp. 53, 88, 92-93 (E.D. Tex. 1974), *rev'd other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (1978). The plan should be developed by an assessment team which includes the child-care worker, the teacher, the caseworker, the juvenile, and his/her parents. By including all personnel that will have contact with the juvenile as well as the juvenile and his/her family, an overall perspective of needs can be obtained. Further, problems can be identified and priorities and program options can be established. *See* Standards 4.2141, 4.2142 and Commentary.

The treatment plan should include a structured schedule of work and other activities, counseling, and remedial education to prepare the juveniles for their eventual return to their home community. The primary emphasis of the plan, however, should be work oriented to comply with the purpose of the camp or ranch. *See* Standard 4.22. Although not specifically stated, the juvenile and his/her parents should be given a copy of the treatment plan. *See* Standard 4.2141.

Standard 4.2141 sets out specific responsibilities for the caseworker and the teacher on the assessment team. The caseworker should review court papers relevant to the dispositional order, family history, and developmental history. He/she should interview the juvenile, study previous assessments, and make recommendations regarding treatment plan and program options. Using testing and available educational records, the teacher should develop an educational evaluation of the academic and vocational skills achievement level, and cognitive development level of the juvenile. The attitude of the juvenile toward education should be determined by the caseworker. He/she should inform the team of any special needs related to the social or educational functioning of the child. *See generally* Standard 4.214 and Commentary; *Report of the Task Force, supra* at Standard 24.6 and Commentary.

The child-care worker is included on the assessment team for juveniles placed in camps and ranches in order to familiarize the worker with the child. By including the child-care worker on the assessment team, he/she will be better able to understand the previous history of the child, be better able to assist in the rehabilitation process, and be able to respond immediately to the juvenile when the teacher or caseworker is not available. Thus the juvenile receives continuity in the quality of services.

The primary service offered by the camp or ranch is vocational. To insure that children receive the maximum benefit with the minimum chance of injury, conditions of a work program should comply with labor and safety codes. Work assignments should be made on a level that is on par with the juveniles' skills. The program should not consist of simple make work. It should provide training to the juvenile while providing a demonstrable service to the community. If the program is to assist in the rehabilitation effort, it must be capable of instilling pride in workmanship and a feeling of accomplishment.

Because job placement today is often dependent upon basic academic skills as well as vocational skills, camps and ranches should provide academic opportunities. To the extent that public school placement is unavailable, on-site academic training must accompany the vocational aspect of the program.

Finally, the standard recommends that camps and ranches maintain a plan for securing medical and dental services from local personnel. Because of the location and purpose of the camp, on-site medical services are probably not possible. This availability of medical services is nevertheless required. Contracting for these services is perhaps the most convenient method for providing them.

Psychiatric services should not be provided at the facility. Children suffering from serious emotional problems are probably poor candidates for a camp or ranch placement. Those possessing such problems should reside closer to treatment facilities so that proper treatment is readily available. *See also* Standard 4.2174 and Commentary.

Related Standards

1.125	Evaluation of Local and State Efforts
1.425	Personnel Providing Direct Services to Juveniles
4.11	Role of the State
4.213	Services
4.2141	Assessment
4.2142	Treatment Plan
4.2193	High Security Units Services
4.22	Camps and Ranches
4.221	Camps and Ranches—Size
4.222	Camps and Ranches—Staff
4.233	Camps and Ranches—Services
4.263	Detention Facilities Services
4.73	Transfers Among Agencies
4.82	Ombudsman Programs

4.23 Group Homes

A group home is an open community-based residential facility which provides care for juveniles who can reasonably be expected to succeed in a nonrestrictive environment in which a substantial part of their time will ordinarily be spent in the surrounding community attending school or working, pursuing leisure time activities, and participating in community service programs recommended by the family court or the treatment staff.

Group homes should ordinarily be renovated community residential structures. When new construction is undertaken, the architecture should be compatible with the surrounding residential structures.

Sources:

John McCartt and Thomas Mangogna, *Guidelines and Standards for Halfway Houses and Community Treatment Programs,* §VI(B)(1) and (5) (1973); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Detention and Correction Facilities,* Standards 5.1, 5.8, and 5.9 (draft, 1976).

Commentary

This standard recommends the development of group homes as a noninstitutional, nonsecure placement option for juveniles who are ready for community placement but who are unable to return home and unable to cope with the intimate relationships of a foster home. The group home is a community-based residential center where services such as employment, vocational and academic training, recreation, and medical care are made available to the juvenile through community resources. This standard does not preclude supplementary services from being provided by the group home in these areas. The standard favors the renovation of existing buildings in the development of group homes and suggests that new buildings be constructed in a manner similar to those in the neighborhood in which they are located.

A group home is appropriate for the juvenile who has been placed under the jurisdiction of the family court but who does not require the restrictive and secure environment provided by a training school. However while it is nonrestrictive, the level of supervision in a group home is generally greater than that provided by a foster home. *See* Standard 4.25. Juveniles awaiting adjudication, *see* Standards 3.151, 3.153, 3.154, as well as those who have been adjudicated delinquent, neglected, or involved in noncriminal misbehavior are eligible for placement. *See* Standards 3.182, 3.183, and 3.184. *See also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice, *Standards Relating to Architecture of Facilities,* Standard 4.1 at Commentary (1977) [hereinafter cited as IJA/ABA, *Architecture of Facilities*]. The group home is also an appropriate facility for juveniles who have been released from a training school but have no adequate home supervision. It offers the juvenile some independence yet provides a supervised and supportive environment. Since an important goal of the juvenile justice system is to reintegrate the juvenile into society, placements in training school will seldom be appropriate for long periods of time. The community-based nature of the group home makes it a particularly attractive placement option for those children no longer in need of secure facilities as well as those whose independence needs rule out a foster home. *See* National Advisory Committee on Juvenile Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.4 at Commentary (1976).

The standard recommends that group homes be established in renovated structures within the community. McCartt and Mangogna, *Guidelines and Standards for Halfway Houses and Community Treatment Centers* (1973) [hereinafter cited as *Halfway Houses*], Standard B2; *see also* IJA/ABA, *Architecture of Facilities, supra* at Standard 4.8. If new construction is necessary for the residence, it should be compatible with neighboring structures. *Accord, Halfway House, supra* at Standard (VI)(B)(2). By resembling other buildings in the surrounding neighborhood, the group home will appear noninstitutional, thereby facilitating integration of the juvenile into the community. Of course, the home should have efficient utility systems and provide a pleasant environment and sufficient space and equipment to meet program needs. *Accord, id.* Group homes should be certified annually to insure conformance with public safety codes, *accord,* IJA/ABA, *Architecture of Facilities, supra* at Standard 4.3, and be inspected regularly by the state agency to insure the high quality of maintenance. *Id.* In addition, the group home should be evaluated periodically to insure program suitability. *Accord, Architecture of Facilities, supra* at Standard 4.5

One of the basic premises of a group home program is that it includes services provided in the community. *See* Standard 4.233; *see also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.1(C)(3) (tentative draft, 1977) and Commentary: IJA/ABA, *Architecture of Facilities, supra* at Standard 4.7. Since the group home looks to the community for its resources, it should be located near programs relating to it.

In order to foster as normal an environment as possible, the group home should accommodate a small number of juveniles, *see,* Standard 4.231, and maintain a close staff-juvenile relationship. *See* Standards 4.232 and 4.233. Staff is employed on a salaried basis and is responsible to the state youth agency. *See* Standards 4.11, 4.232 and Commentaries.

Related Standards

1.125	Evaluation of Local and State Efforts
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.153	Criteria for Detention and Release—Noncriminal Misbehavior
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
4.11	Role of the State
4.21	Training Schools
4.231	Group Homes—Size
4.232	Group Homes—Staff
4.233	Group Homes—Services
4.234	Group Homes—Central Services
4.25	Foster Homes
4.41-4.111	Rights of Juveniles
4.51-4.54	Disciplinary Procedures
4.61-4.62	Use of Restraints
4.71-4.73	Transfer Procedures
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.231 Size

No more than twelve juveniles should be placed in a group home.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Architecture for Group Homes and Secure Detention and Corrections Facilities,* Standards 5.2 (draft, 1976).

Commentary

This standard recommends that no more than twelve juveniles be placed in any group home. *Accord,* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juveniles Justice and Delinquency Prevention,* Standard 24.4 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Architecture of Facilities,* Standard 4.2, and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Corrections Administration,* Standard 7.10 and Commentary [hereinafter cited as IJA/ABA, *Corrections Administration*]. Most state agencies as well recommended ten or twelve as the upper limit for group home programs. See, IJA/ABA, *Corrections Administration,* Standard 7.10 and Commentary.

Despite disagreements over the exact number of juveniles that should be placed in a group home, there is a definite consensus the number must be kept small. The size of the facility always affects the services offered. *See* Standards 4.112, and 4.2191 and Commentaries. By keeping the numbers low in a group home, the ratio of staff to juvenile will remain high, fostering the development of a close and personal relationship between them. The high ratio allows for greater supervision, greater interaction, and greater trust and respect. *See* IJA/ABA, *Corrections Administration,* Standard 7.10 and Commentary. Placing no more than twelve juveniles in a group home also eliminates an institutional atmosphere and permits better relationship to develop between the residents. Consequently, the day-to-day functioning of the group home will be smoother.

The small facility also fosters reintegration into the community. The fewer differences perceived between the group home and the other homes in the neighborhood will enable the juvenile to see him/herself as part of the society and not as an outsider. The community should not perceive the group home as a corrections facility. Keeping the number small creates the appearance of a normal household, thus creating more community acceptance.

Finally, since the facility will most often be a renovated house, the size of the building itself will make it impossible to house a larger number of juveniles without violating housing codes, eliminating the privacy of the residents, or simply overcrowding the building.

Related Standards

4.11	Role of the State
4.2112	Training Schools—Size and Design
4.2191	High Security Units—Size
4.221	Camps and Ranches—Size
4.261	Detention Facilities—Size

4.232 Staff

Staffing should depend upon the size of the home, and as this may vary, considerable flexibility is required. At a minimum, there should be one adult on duty at all times. In addition, there should be one caseworker for every twelve or fewer children, with the qualifications described in Standard 4.2122. Where there are clusters of group homes with populations under twelve, arrangements should be made for the caseworker to share his/her time among the homes according to the above ratio.

Where houseparents are utilized, appropriate relief should be provided to include weekend relief, vacation time, sick time, and some free time.

Sources:

See generally John McCartt and Thomas Mangogna, *Guidelines and Standards for Halfway Houses and Community Treatment Centers,* 47, and 151-156 (1973).

Commentary

This standard recommends the minimum staff to be provided for all group homes. An adult should be available 24-hours-a-day and one caseworker should be provided for every twelve juveniles. The qualifications of the caseworker are the same as for those serving in training schools. The standard recognizes that when houseparents are residing in the group home, they should receive some free time and assistance including vacations and relief on the weekends and when sick, and some leisure time during the day.

The Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.10 (C) (5) (1977), the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.4 and Commentary (1976), and the American Correctional Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Community Residential Services,* Standard 6122 (1978), all recommend that there be at least one adult on duty at all times in a group home. A juvenile may need assistance at anytime. There should always be someone accessible and responsive no matter when the need arises. According to McCartt and Mangogna, *Guidelines and Standards for Halfway Houses and Community Treatment Centers* (1973) [hereinafter cited as *Halfway Houses*], all staff members must agree to work other than 'regular hours' before they accept employment with the agency since the nature of the services of a group home requires someone to be on duty at all times. Ch. X, 151. *See also* Standard 1.41.

The standard recommends that there be one caseworker for every twelve juveniles in the group home. This is a higher ratio than recommended for the training school population. *See* Standard 4.121 recommending a ratio of 1:20. Because of the greater variety and number of staff employed in training schools, e.g., a psychologist, psychiatrist, child-care worker, caseworker, educational diagnostician, teacher, and vocational and academic counselor, and because the children are all physically housed and treated in one place, one caseworker is sufficient for twenty residents in a training school. Since fewer personnel will be available in the group home and since the provision of services is scattered throughout the community, one caseworker to twelve residents is necessary.

The standard recommends that the qualifications of the caseworker be the same as those serving in training schools. *See* Standard 4.2122. That standard requires that the caseworker have a bachelor's degree with courses in social work, psychology, or the behavioral sciences along with one year of full-time, paid employment experience working with adolescents. *See also* Standard 1.41. Standard 1.425 would also require that caseworkers receive preservice and inservice training to remain knowledgeable in legal developments, court procedures and social work theory. *See also Halfway Houses, supra.*

Houseparents can service a vital role in the group home by providing full-time, live-in supervision. Most commonly, houseparents are a nonprofessional married couple but sometimes they are live-in, unrelated persons. *See* Standard 4.251 for qualifications of foster parents. It would be unrealistic to expect them to play this demanding role without appropriate benefits. The standard recognizes this need and requires that weekend relief, vacations, sick leave, and some leisure time be provided. *Accord, Halfway Houses, supra.*

The National Council on Crime and Delinquency's publication, "The Maryland Group Home Program," describes some of the possible group living staffing patterns. In the traditional group home, the employed houseparents are on duty 24-hours-a-day but are given relief time by another couple or person. Other group homes use a greater number of staff who work in shifts, for example, twenty-four hours on, forty-eight hours off. The standard recognizes that each state will have to determine the best way to operate its group homes. But whichever way is chosen, adequate relief time is necessary to maintain good mental health and high morale and to permit time for the resident staff to attend to personal business and pursue other interests.

Related Standards

1.41	Personnel Selection
1.425	Personnel Providing Direct Services to Juveniles
4.11	Role of the State
4.2121	Training Schools—Staff Size
4.2122	Staff Qualifications
4.2191	High Security Units—Size
4.22	Camps and Ranches
4.23	Group Homes
4.231	Group Homes—Size
4.233	Group Homes—Services
4.234	Group Homes—Central Services
4.251	Foster Homes—Staff
4.262	Detention Facilties—Staff

4.233 Services

In-house services at all group homes should include shelter, food, recreation, temporary financial assistance, and individual and/or group counseling. Juveniles placed in group homes should have access, as their particular needs require, to services in the community which are not provided in-house. Among the community services which should be available to such juveniles are: medical, psychiatric, and dental care; psychological evaluation, counseling, and therapy; vocational training; vocational and/or employment counseling and evaluation; employment placement; and academic upgrading. Supplementary services in these areas may also be provided by the group home.

Before or upon admission to a group home, a juvenile and, whenever possible, his/her family should assist in the preparation of an assessment of needs and the development of a plan establishing goals to be achieved during the juvenile's stay. In helping the juvenile to accomplish these goals, the group home's role should be similar to that of a properly functioning natural home, including the provision of necessities; assisting juveniles to overcome difficulties in a broad range of areas; and serving as a place to which juveniles can turn in time of need.

A single case record for each juvenile admitted to a group home should be maintained.

Sources:

See generally J. McCartt and T. Mangogna, *Guidelines and Standard for Halfway Houses and Community Treatment Centers,* 83, 85, and 87 (1973).

Commentary

This standard outlines the services which should be available to a juvenile who is placed in a group home. These services are divided into two types. Some services such as shelter, food, recreation, financial assistance, and counseling must be provided within the home itself. Other services including medical, pyschiatric and dental care, psychological evaluation, therapy, vocational training, and employment counseling should be provided by community resources. However, the group home may supplement those services when appropriate. The standard urges that the juvenile and his/her family participate in an evaluation of the juvenile's needs and help plan a program to meet those needs. It further recommends that the role of the group home be much like that of a natural home by providing necessities and moral support to the juvenile.

Not all juveniles residing in group homes will be in need of treatment. Some will be placed there for other reasons, *see* Standard 4.23 and Commentary, and will need little more than occasional counseling. Upon admission to the group home, an assessment of the juvenile's needs must be made a plan establishing goals for the juvenile during her/his stay in a group home should be developed. *See also* Standard 4.2141. The juvenile and his/her family should be involved in setting goals for the juvenile during the period of residence. Involving the juvenile in the treatment program will increase the likelihood of cooperation and involvement. It permits the juvenile to retain a feeling of autonomy even though others are controlling much of his/her activity. *Accord,* J. McCartt and T. Mangogna, *Guidelines and Standard for Halfway Houses,* B. 15 and 16 (1973) [hereinafter cited as *Halfway Houses*]. Involving the juvenile's family in this process is also important since they have significant information about the juvenile. Further, their participation will give the juvenile support and assist in the reintegration process.

The standard suggests that the group home serve the function of a natural home to assist the juvenile in developing both physically and mentally. Some of the factors which go into ensuring this kind of environment are included in Standards 4.41-4.410 which apply to all residential facilities. In a normal, natural home a juvenile would expect to find similar protections. Similarly, a group home is expected to meet basic human needs. *Accord,* National Advisory Committee on Criminal Justice Standard and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.4-24.12 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standards 4.9 and 4.10.

Single case records should be maintained to provide the staff with a comprehensive view of the juvenile's progress. Single case records provide for continuity of services whenever staff personnel change. *Accord, Halfway Houses, supra* at 19, 20, and 21. *See also* Standards 1.51, 1.52, and 1.533.

Related Standards

1.51	Security and Privacy of Records
1.52	Collection and Retention of Records
1.53	Access to Intake, Detention, Emergency Custody, and Dispositional Records
4.213	Training Schools—Services
4.214-4.2142	Development of a Treatment Plan
4.215	Group Counseling and Treatment Services
4.216-4.2163	Educational Services

4.217-4.2174	Health and Mental Health Services
4.218	Recreation Services
4.223	Camps and Ranches—Services
4.23	Group Homes
4.231	Group Homes—Size
4.232	Group Homes—Staff
4.234	Group Homes—Central Services
4.252	Foster Homes—Services
4.263	Detention Facilities—Services
4.41-4.411	Rights of Juveniles

4.234 Central Services

The public or private agency operating a group home should oversee the home's operations, periodically assess the impact and effectiveness of its program, and provide necessary support. Actual service delivery should be the responsibility of the group home staff.

Sources:

None of the standards reviewed address all the issues discussed. On the periodic evaluation of group home services, *see generally* J. McCartt and T. Mangogna, *Guidelines and Standards for Halfway Houses and Community Treatment Centers*, 89 (1973).

Commentary

This standard recommends that while the internal staff of the group home is responsible for service delivery, the state or private agency operating the group home must oversee the program and develop a mechanism by which it can measure its effectiveness. Although the day-to-day operations of the group home are the responsibility of the staff, the public or private agency that sponsors the home must insure that the home is well-funded and well-supported. Individual group homes should not be left to their own resources when developing programs or securing support and assistance. Each home must be able to call upon its parent agency to fulfill its purpose.

An evaluation process is essential to keep a group home functioning in an effective manner. The process allows the home to make necessary changes and additions that will better enable it to attain its goals. Although the standards provide for evaluation of programs by the planning agency of the state, *see* Standard 1.125, the state agency providing services should also evaluate the program periodically. By doing so necessary changes can be implemented rapidly.

Related Standards

1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
4.11	Role of the State
4.23	Group Homes
4.231	Group Homes—Size
4.232	Group Homes—Staff
4.233	Group Homes—Services
4.41-4.411	Mail and Censorship
4.51-4.54	Corporal Punishment
4.61	Mechanical Restraints
4.62	Medical Restraints
4.71-4.73	Transfers From Less Secure to More Secure Facilities
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.24 Community Correctional Facilities

A community correctional facility should be used as a generic term describing any category of facilities serving juveniles accused or adjudicated of committing delinquent acts, that are located in the community from which they draw their residents. The development of community correctional facilities should be preferred to the construction of noncommunity-based correctional facilities.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration*, Standard 7.3 (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*]; M. Luger and M. Goddard, "State Services for Children and Youth," *Counsel of State Governments, Book of the States: 1972-1973*, 393, 394 (1972).

Commentary

This standard pertains to all community correctional facilities. "Community correctional facility" is a generic term describing any type of facility serving youths accused or adjudicated of delinquency, and situated in the community from which its residents are drawn. This standard applies to foster homes, group homes, and shelter care facilities, as well as to detention facilities and training schools. *See* Standards 4.21, 4.23, 4.25, 4.26, and 4.27. Thus it covers both "secure" and "nonsecure" correctional facilities.

This standard establishes a clear preference for locating any type of correctional facility within the same community from which it draws its residents. In so doing, the standard is intended to promote the current trend toward basing a greater proportion of correctional programs within the community itself. The National Institute of Mental Health has defined this current trend as follows:

> "Increasing evidence that institutionalization may be more destructive than rehabilitative, and may in fact increase probabilities of recidivism, initiated a trend which emphasizes alternatives to imprisonment or, where institutionalization is felt to be necessary, transitional programs in the community to facilitate reintegration. National Institute of Mental Health, *Community-Based Correctional Program: Models and Practices*, 1-2 (1971).

This preference for community-based correctional programs has also been endorsed by the Task Force and the IJA/ABA Joint Commission. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention*, Standard 24.2 and Commentary (1976) [hereinafter cited as *Report of the Task Force*]; and IJA/ABA, *Corrections Administration, supra*. By the term "community," the National Advisory Committee, like the *Report of the Task Force, supra*, and the IJA/ABA, *Corrections Administration, supra* emphasize "the juvenile's own community rather than community in the generic sense." IJA/ABA, *Corrections Administration, supra* at Commentary to Standard 7.3. *See Report of the Task Force, supra* at Commentary to Standard 24.2 (residential "facilities should be located in the communities from which they draw their populations . . .").

The current emphasis upon establishing corrections programs and services within the community has been questioned by some reformers on the ground that any stimulus for the construction of "new" corrections facilities may only cause, or further entrench, patterns of over-institutionalization. *See, e.g.*, National Institute of Mental Health, *supra* at 3. The National Advisory Committee has no desire to stimulate the construction of additional youth correctional facilities or the increase of institutionalization as a placement alternative. However, to the extent states and localities see a necessity for corrections facilities, those facilities should be in the residents' own communities. As noted above, the strong preference for community-based facilities established in this standard applies to small-scale group homes, foster homes, and shelter care facilities, as well as to detention facilities and training schools.

The phenomenon of institutionalization of delinquent youth is unlikely to be eradicated entirely. Community-based facilities are far less costly and far less damaging to the personality and humanity of the juvenile, than are the more traditional, geographically remote, frequently overcrowded institutions which can do no better job. *See* National Institute for Mental Health, *supra*. For these reasons the use of community corrections facilities enjoys wide support among other standards-setting groups. The National Advisory Committee joins them in endorsing the placement of corrections facilities within the community—coupled with a gradual abandonment or conversion of the large-scale prison-like facilities which are now commonplace. Community-based correctional facilities should be substitutes for, not supplements to, juvenile "prisons" and other large remote youth correctional facilities.

The IJA/ABA Joint Commission has noted the three major reasons for preserving the family and community ties of the institutionalized juvenile. First, emphasis is placed on insuring a safe, human, caring environment. *See* IJA/ABA, *Corrections Administration, supra* at Commentary to Standard 7.3. The National Advisory Committee concurs that locating the facility within the community can best assure that the facility staff if kept accountable to the community for maintaining adequate services and a truly caring atmosphere. Second, a juvenile should maintain ties with family and friends—or what the IJA/ABA Joint Commission called "continuity in primary relationships." *Id. See generally* J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interest of the Child* (1973). Third, services and resources from the community should be fully utilized and should not be duplicated by the corrections facility. *See* IJA/ABA, *Corrections Administration, supra.*

What opponents of community-based correctional facilities frequently forget is that juveniles placed in correctional institutions eventually return home. To sever or reduce a delinquent youth's ties with family members, peers, and other support systems in the community can only increase the chance of recidivism when the youth returns to the community. *See generally Report of the Task Force, supra* at Commentary to Standard 24.2. Maintaining community ties requires a number of things: an opportunity for frequent visits with family and friends, outside as well as inside the facility; resident involvement in community activities; volunteer and other community involvement with facility residents; facility staff members drawn from within the community as much as possible, including the employment of qualified former juvenile inmates on the staff; and a co-educational living structure within the facility itself. *See generally Report of the Task Force, supra.* Obviously, these components are largely missing from any correctional facility located outside the juvenile's own community. If the components of a "community-based facility" are provided, delinquents will be better able to function at liberty in the community upon release. Although hard evidence is lacking, the National Advisory Committee also believes that juveniles from a community-based facility enjoy a better chance of avoiding subsequent delinquency. *See Report of the Task Force, supra. But see* National Institute of Mental Health, *supra* at 33.

The National Advisory Committee endorses the definitions and guidelines for "community-based facilities" promulgated by the Office of Juvenile Justice and Delinquency Convention pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974. *See* 43 Fed. Reg. 36402, 36409 (1978). Unlike this standard, these regulations do not cover "secure" facilities nor large community residential facilities. However, the National Advisory Committee finds wholly compatible the basic OJJDP criteria for what constitutes a "community-based" facility or program. The Juvenile Justice Act defines "community-based . . . facility, program or service" as a "suitable place located near the juvenile's home or family, and programs of community and consumer participation in the planning, operation, and evaluation of their programs . . ." The regulations note that the available programs may include, but are not limited to, medical, educational, vocational, social and psychological guidance, training, counseling, alcoholism treatment, drug treatment, and other rehabilitative services. *Id.* The regulations clarify that by requiring that facilities be located "near the juvenile's home." The Act intended that each correctional facility be within reasonable proximity to the juvenile's famiy and home community to facilitate the maintenance of close family and community contact. 43 Fed. Reg. 36402, 36409 (1978). "Consumer participation" means that residents and program participants should be involved in planning, problem solving, and decision making about the program in which they are involved. *Id.* "Community participation" means that the facility and its programs should facilitate the involvement of community members as volunteers or direct service providers, and should offer opportunities to facility residents for communication and interaction with neighborhood and other community groups. *Id.*

There are two basic types of community correctional facilities. The first are foster and group homes; the second are larger community residential programs. *See National Institute of Mental Health, supra* at 22-31; American Correctional Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Community Residential Services,* Introduction (1978) [hereinafter cited as *Manual of Standards*]; and *Report of the Task Force, supra.*

The National Advisory Committee strongly recommends that foster homes should be preferred over all other types of nonsecure residential facilities. The Task Force and the IJA/ABA Joint Commission are both in accord. *See Report of the Task Force, supra* at 678; IJA/ABA, *Corrections Administration, supra* at Standard 7.10B. Nonetheless, use of foster homes is not as frequent as it should be. The IJA/ABA Joint Commission correctly suggest that this is due to low levels of payments in many states. *Id.* The National Institute of Mental Health has observed that "jurisdictions in which sufficient resources are not available to the courts, frequently institutionalized those juveniles for whom living in their own homes is considered adverse to their rehabilitation, *simply because the judge sees no alternative." National Institute of Mental Health, supra* at 22 (emphasis added). Adequate foster homes and group homes would provide that critically needed alternative. Another obstacle to minimally adequate foster care for committed youths is that most foster care placements are channeled through an agency other than the one responsible for corrections. *See* IJA/ABA *Corrections Administration, supra* at 150. These standards resolve this difficulty by proposing that the agency responsible for corrections administration itself take responsibility for making such placements.

Group homes are sometimes effective where foster placement has failed or is unavailable. The National Institute of Mental Health attributes the effectiveness of group homes for some youths to "the less intense personal relationships required in the group home." *National Institute of Mental Health, supra* at 25. It has been suggested that the more impersonal setting of the group home may best meet the needs of a certain minority of adolescents, since some disturbed adolescents may not be able to tolerate the intimacy of family life in a foster home. *Id.;* and I. Rabinow, "Agency-Operated Group Homes," *Child Welfare,* 415-433 (1964).

Group homes should make full use of community services and resources. Juveniles placed in such facilities should be integrated in their own community whenever possible. *See* Standard 4.23; IJA/ABA, *Corrections Administration, supra* at Standard 7.10C and Commentary; and *Report of the Task Force, supra* at 678. For further discussion of both foster and group homes, *see* Standards 4.23 and 4.25.

The category of large community residential programs includes both secure and nonsecure residential centers which are highly integrated into the community and yet provide a structured living environment. *See, e.g., National Institute of Mental Health, supra* at 31; and *Manual of Standards, supra* at xxi.

The National Advisory Committee endorses models for such facilities which propose an "active" role for the client in treatment. *See, e.g., National Institute of Mental Health, supra* at 31; and regulations promulgated pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 43 Fed. Reg. 36402, 36409 (1978). This is not to suggest that the predominant treatment designed for a larger community residential program necessarily should be the "therapeutic community" or the guided group interaction model. But the juvenile should be allowed to share in treatment decision making, and should be involved where possible in the supportive treatment of others. The National Advisory Committee endorses the careful, and controlled use of the closely supervised closed group as a potential major correctional resource. *See generally National Institute of Mental Health, supra* at 31.

Despite the support for such facilities among standards commissions and social theoreticians, a major obstacle to the wider development and use of community alternatives in both adult and juvenile correction may be the widespread rejection of the offender by the community itself and society's desire to keep the offender "out of sight and out of mind." *See National Institute of Mental Health, supra* at 36. The task of "social" control has been relegated gradually to a smaller and smaller proportion of society, while most people reject responsibility for what is perceived to be a growing variety of "deviant" persons and behaviors. However, isolation and banishment simply have not worked. *Id.* Unless we as a society are willing to keep a large and growing number of offenders in permanent custody, we must accept more widely-shared responsibility in the areas of social control and correction. *Id.* Enactment of this standard would be a large step in that salutary direction.

Related Standards

1.41 Personnel Selection
1.425 Personnel Providing Direct Services to Juveniles
1.428 Personnel Providing Support Services in Residential Programs
3.152 Criteria for Detention in Secure Facilities—Delinquency
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184 Dispositional Alternatives and Criteria—Neglect and Abuse
4.21 Training Schools
4.211 Physical Characteristics and Population
4.2111 Location
4.2112 Size and Design
4.212 Staff
4.2121 Staff Size
4.2122 Staff Qualifications
4.213 Services
4.214 Development of a Treatment Plan
4.2141 Assessment
4.2142 Treatment Plan
4.215 Group Counseling and Treatment Services
4.2151 Group Therapy
4.2152 Semi-Autonomous Treatment Model
4.216 Educational Services
4.2161 Academic Education
4.2162 Vocational Education
4.2163 Special Education
4.217 Health and Mental Health Services
4.2171 Initial Health Examination and Assessment
4.2172 Responsibility Toward Patients
4.2173 Diet
4.2174 Mental Health Services
4.218 Recreational Services
4.22 Camps and Ranches
4.211 Size
4.222 Staff
4.223 Services
4.23 Group Homes
4.231 Size
4.232 Staff
4.233 Services
4.234 Central Services
4.25 Foster Homes
4.251 Staff
4.252 Services
4.26 Detention Facilities
4.261 Size
4.262 Staff
4.263 Services
4.27 Shelter Care Facilities
4.3 Nonresidential Programs
4.31 Community Supervision
4.32 Services
4.33 Imposition and Enforcement of Regulations

4.25 Foster Homes

Foster homes are substitute family settings in which foster parents care for juveniles who can adapt to an open, nonsecure home environment. No more than six (6) juveniles, should be placed in a foster home. Foster homes should be used for placement by the family court following the filing of a complaint, following adjudication, or upon release from a camp, group home, or detention facility where there is no adequate home plan. If foster care services are required, a juvenile should ordinarily be placed in his/her home community unless family or community relations are such that an out-of-community foster home placement is needed.

Foster homes should not be drawn from any particular strata of society. However, physical standards for the foster home should be set according to the standards of the community in which the home is located, provided that in all cases, the requirements of municipal and state fire and safety codes are met.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 7.10 (draft, 1976) [hereinafter cited as IJA/ABA *Corrections Administration*]; American Public Welfare Association, *Standards for Foster Family Service Systems,* Guideline XVI(B)(3)(1975).

Commentary

This standard recommends the establishment of foster homes and delineates the situations in which it is a permissible placement. A foster home may be used as a residence for juveniles adjudicated neglected, delinquent, or involved in noncriminal misbehavior, *see* Standards 3.182, 3.183, 3.184, as well as for those against whom a complaint has been filed. *See* Standards 3.152, 3.153, and 3.154. This standard also recommends placing a juvenile in foster home that is located in his/her home community unless it is inappropriate.

The standard defines a foster home as a nonsecure placement that provides care in a truly family-like setting. *Accord,* IJA/ABA *Corrections Administration, supra* at Standard 7.10.

The standard's preference for placement of no more than six juveniles in a foster home stems from a recognition that the necessary supervision, attention, and control that a juvenile requires becomes difficult to provide if more children are placed in each home. In addition, the "family-like" setting becomes harder to achieve as more nonrelated people join the household. *See* IJA/ABA, *Corrections Administration, supra* at Standard 7.2 and Commentary.

Foster care is appropriate at various stages of a family court proceeding. A juvenile charged with noncriminal misbehavior may be placed in foster care when no one is willing to provide care and support and the juvenile is unable to provide for him/herself. *See* Standard 3.153. Similarly, when neglect has been alleged, foster placement is a permissible pre-adjudication placement. *See* Standard 3.154. In delinquency cases, a foster home may be an appropriate placement as well. *See* Standard 3.152. Once a child has been found to be involved in noncriminal misbehavior or to be a neglected child, foster homes are the preferred placement if the child cannot return home. *See* Standards 3.183, 3.184 and Commentary. Since juveniles adjudicated delinquent, like all other adjudicated juveniles, must be treated in the least restrictive environment available, *see* Standards 3.182, 4.410 and Commentaries, foster homes should be considered before other forms of residential facilities are employed. They may also be used for those juveniles no longer in need of secure residential care but who can not be returned home for reasons other than security or treatment. *Id.*

Although the use of foster homes is desirable, there is some indication that they are not an integral part of most state juvenile corrections systems. *See* IJA/ABA, *Corrections Administration, supra* at Standard 7.10B and Commentary. Foster care placement has not been used effectively to deinstitutionalize juveniles, *See* R. Unter, G. Downs, and J. Hall, "Juvenile Corrections in the State Residential Programs and Deinstitutionalization" (1975), and not all states provide foster homes for juveniles who have been involved in delinquent acts. This standard recommends expanding the use of foster care so that it becomes the primary out-of-home placement for neglected juveniles and those involved in noncriminal misbehavior and a more utilized placement for delinquents.

The standard recommends that juveniles be placed in homes in their own community. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 7.B. It is essential that disruptions of the juvenile's cultural and geographical roots be kept to a minimum so that continuity in relationships may be preserved.

The standard also recommends minimal physical requirements for the foster home. In accord with the American Public Welfare Association *Standards for Foster Family Service Systems,* Standard XVI B.3, (1975) [hereinafter cited as *Foster Family*], the physical standards of the foster home should be similar to those of the community in which the home is located. Foster homes must also meet all zoning, housing, and fire and safety requirements. *See also* IJA/ABA, *Corrections Administration, supra* at Standard 7.10 B.2. Homes should be comfortable and safe and provide, to as great an extent possible, the privacy and intimacy of family life. For a more complete description of physical requirements, *see, Foster Family, supra* at Standard XVI B.3 (a-e).

The administrative responsibility for the functioning of the foster homes resides with the state youth agency. *See* Standard 4.11. Like all other residential facilities, foster homes may be state operated or state supervised and locally administered. The foster homes should be evaluated periodically to insure compliance with licensing regulations and routinely monitored to maintain a high quality of care. *See* Standards 1.125 and 4.251.

Related Standards

1.125	Evaluation of Local and State Efforts
3.152	Criteria for Detention in Secure Facilities—Delinquency
3.153	Criteria for Detention and Release—Noncriminal Misbehavior
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
4.11	Role of the State
4.251	Foster Homes—Staff
4.252	Services
4.41-4.411	Rights of Juveniles
4.51-4.54	Discipline
4.61-4.62	Use of Restraints
4.71-4.7	Transfer Procedures
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.251 Staff

Persons providing foster care should be selected for their parenting abilities and provided with specialized training to assist them in meeting the needs of the juveniles placed in the home by the family court. Foster homes should be staffed by married couples except in circumstances in which it has been specifically determined that the provision of foster care services by a single person would be appropriate.

Sufficient supervisory staff should be available within the parent agency to provide bi-monthly inspection and a yearly evaluation of each foster home, and sufficient professional support staff should be available to provide ongoing inservice training and intervention in crisis situations.

Foster parents may be compensated. However, noncompensated foster parents should be reimbursed for actual expenses. Where compensation is paid, a career ladder with salary increments should be developed based on length of service, training, and the severity of the problems exhibited by the juveniles referred to and accepted by the foster parent. Unless specific approval is obtained from the oversight agency no more than one foster parent should be employed outside the home.

Source:

See generally American Public Welfare Association, *Standards for Foster Family Service Systems,* 45-46 (1975).

Commentary

This standard recommends criteria for the difficult task of selecting foster parents. The standard stresses parenting ability as an important factor in selecting foster parents and establishes a preference for the use of married couples with only one working spouse. The standard recommends training and supervision for the foster parents and the provision of services to the foster home to accomplish its purposes. Reimbursement for all actual costs is recommended and where possible, compensation over and above reimbursement.

Parenting ability should be a primary factor in the selection of foster parents. The American Public Welfare Association, *Standards For Foster Family Service Systems,* Standard XVI B.6 [hereinafter cited as *Foster Family*] explicitly details what factors should be taken into consideration when assessing prospective foster parents. Some of the most important factors relating to the parenting ability are:

(1) the motivations of the prospective foster parent;
(2) the existing family relationships, especially the relationship between the parents and their natural children;
(3) the capacity of the foster parents to fulfill the child's needs and to accept and love the child;
(4) the ability of the prospective foster parent to provide continuity of care for the child during his/her need for placement, but also the flexibility to meet the changing needs of the child over time;
(5) the ability of the prospective foster parents to care for any special needs the child may have (e.g., those of physically, mentally, or emotionally handicapped children); and
(6) the prospective foster parents' attitudes toward the natural parents and their ability to help the child return home or be adopted. *Id.* at B.6 (a-f)

Other important aspects of parenting ability involve the personal qualities of prospective foster parents. Maturity, stability, flexibility, warmth, responsiveness and the ability to handle stressful situations are essential to perform the task. *Id.* at B.5. These personal traits may be assessed from the parents' education and employment, social and intellectual relationships, day-to-day functioning, moral, ethical and religious standing, and hobbies or special interests. *See generally Id.* at XVI; Law Enforcement Assistance Administration, Office of Juvenile of Juvenile Justice and Delinquency Prevention, *Foster Parenting* (1978).

Since the foster parent selection process is a qualitative one, single parents are not precluded from becoming foster parents. The standard does, however, establish a preference for married couples. *See also* Institute of Judicial Administration-/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.10 B and Commentary. The benefits derived from a two-parent home include the attention and love from two people rather than one, and the advantage of having a family model for the child. Most children coming into the juvenile justice system have recently experienced abrupt and traumatic changes in their lives. They are apt to be confused and distraught and perhaps hostile. Such children will most likely need the assistance of two people. Often, as well, a caretaker of the juvenile in the foster home will need the support of another close adult to cope with the situation. It must be understood that the position taken by the standard is not meant to criticize or pass judgment on one-parent families. It does, in fact, endorse them in appropriate situations. However, the majority of children in need of a foster home placement will probably benefit from two-parent families.

Once a person is selected to be a foster parent, the agency should provide preliminary and ongoing foster parent training. *See* Standard 0.425. *Foster Family, supra* at Standard XVI recommends a minimum of twelve hours

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training within the first six months of initial placement. Special exceptions are made for rural or remote areas. The guidelines also suggest an annual minimum of twenty-five hours of ongoing education. Although participation in such programs would be optional, nonparticipation could be a factor in subsequent evaluations of the foster parents.

The reciprocal responsibility of the agency is to provide social work supervision and services. *Foster Family, supra* at Standard XVI recommends intensive supervision during the initial three months of placement. Ideally, such supervision should be available on a 24-hour basis to meaningfully implement the concept of crisis intervention. The agency is also required to evaluate the home annually and to inspect it on a bi-monthly basis. *See* Standard 1.125. *See also Foster Family, supra* at Standard XVI suggesting an initial evaluation six months after placement, and annually thereafter. Such inspections and evaluations will insure continued quality of the foster home and continued compliance with all licensing regulations.

In light of the standard's recommendation that there be inservice training, inspections and intervention when necessary, it is clear that the agency is responsible to insure that all of the child's needs are being met and that all necessary assistance is being given to the foster parents. Once a foster family receives a child, they should not be abandoned by the agency. Foster parents and children will require different kinds of assistance at different intensities. A qualified social service worker should be selected, *see* Standard 1.41, and trained, *see* Standard 1.425, and be available so that all of the needs of the foster family are met.

The standard recommends that all foster parents be reimbursed for at least the cost of care. *Accord, Foster Family, supra* at Standard XVI. Reimbursements should be based on standard costs and be appropriate to age and any special needs of the individual child. Reimbursement usually covers such items as food, clothing, allowance, medical care, school supplies, recreation, and travel expenses. *Id.* XVI E (1)(C) 1-7. Payment for costs should also include the costs of any special services or equipment for the child. For example, if a handicapped child is placed in a foster home, the agency should reimburse the foster parents for any extra costs incurred in caring for that disabled child. Under some foster care programs, a special service fee in a set amount is paid each month to a foster parent who is caring for a special child. Such practice is required by the standard as well if that is the only way to insure proper placement. *See also* Standard 4.410. Handicapped children cannot be deprived of an appropriate foster care program merely because the costs of such care is more than for normal children. 45 CFR §83.

The *Foster Family, supra* standards also recommend that the agency protect foster parents against all claims or loss arising out of their duties as foster parents. That would include liability insurance and/or legal costs when a civil or criminal suit has been instituted against the foster parents for actions taken in the course of their duties. *See Foster Family, supra* at Standard XVI G. Such practice is appropriate under the standard as long as the activity giving rise to the complaint was performed in the normal course of business and was not outside the scope of the foster parents' duties.

In addition to payments for actual costs, the standard suggests an employment status to compensate foster parents. This involves a career ladder with salary increments depending on the foster parents' level of experience. *See also Foster Family, supra* at Standard XVI D. There are many advantages to compensating foster parents and for adopting employment status. When foster parents receive only reimbursements for actual living costs, it is difficult to recruit them. Foster care has been under-utilized as a placement option since the task is not an easy one and the benefits in return have been small. This is especially true when trying to place mentally or physically handicapped children. In 1976, the Family and Child Service of Pittsburgh, Pennsylvania, started a placement program for mentally retarded children. The foster parents in this program are salaried staff personnel. This new status has motivated foster parents to become more involved with the agency and has fostered close cooperation with the rest of the staff. In turn, the foster parents have become recruiters, seeking friends and relatives to work as foster parents. H. Freeman, "Foster Home Care for Mentally Retarded Children: Can It Work?" 42 *Child Welfare* 3 (1978).

Finally, the standard provides that in the preferred two-parent home, only one of the parents should be employed outside of the home. The theory supporting this preference is the same as that supporting the preference for two-parent families. *See also Foster Family, supra* at Standard XVI 26. The needs of the juvenile will most often require that a foster parent always be available. In foster homes where this is not possible, the appropriateness of the placement should be reevaluated. If the placement is not suitable to the needs of the child, other arrangements should be made. Where it is unnecessary to have one parent remain in the home at all times, adequate day-care plans should be made for the child. *Accord, Foster Family, supra* at Standard XVI 26.

Related Standards

1.41	Personnel Selection
1.425	Personnel Providing Direct Services to Juveniles
4.25	Foster Homes
4.252	Services
4.410	Right to Treatment

4.252 Services

The foster home should be a family setting. Concentration should be upon comfort and privacy in the living arrangements, the parenting skills of the houseparents and accessibility of the home to schools, recreation, and special resources such as medical clinics required by the juveniles placed therein.

Source:

See generally American Public Welfare Association, *Standards for Foster Family Service Systems,* 68-70 (1975).

Commentary

This standard reiterates the importance of creating a family setting in the foster home and using persons with good parenting skills as foster parents. *See* Standards 4.25, 4.251 and Commentaries. The agency should provide the juvenile residing in a foster home with the same basic services that any other child living with his/her parents would need. Any special treatment should be obtained on an out-patient basis.

Implicit in the standard is an understanding that the agency should give services to the natural parents as well as the foster parents and the child once a placement is made. Since the ideal foster home should be as family-like as possible, the standard stresses comfort and privacy in the living arrangements, and easy access to community resources such as schools, medical care, and recreation.

According to the American Public Welfare Association, *Standards for Foster Family Service Systems,* Standard XX (1975) [hereinafter cited as *Foster Family*], the agency should provide services to the natural parent during placement since support and assistance is necessary during this critical time. Such services may include planning visits between the natural parent and child, involving the natural parent in the selection of a foster family and encouraging the natural parents to utilize counseling to discuss any feelings they may have regarding separation and guilt. *Foster Family, supra* at Standard XX (I), (J). Working with the natural parents will also enable the child to be reunited with his/her parents.

The agency's obligation to provide services to juveniles falls into two main categories. First, there are general services of a therapeutic nature to help the child adjust emotionally to his/her new home. These include services which will:

a. help children understand why their families placed them, accept the placement situation, and adjust to the foster family;
b. maintain a healthy relationship with his/her own family or, when indicated, come to an understanding of the necessity of severing the relationship, *id.;* and
c. offer high quality social work and other services in relation to—
   1) stress situations during which the child may need special help, including loss, separation, medical care, hospitalization, social and school problems, or other unavoidable disturbing experiences;
   2) the child's anxiety and lack of adjustment to the foster placement;
   3) continuity of social worker and parent(s)' relationship;
   4) maladjustment of child throughout placement;
   5) identifying and preventing potentially damaging situations from developing;
   6) planning for individual living arrangements for child;
   7) planning for vocational or higher education for child; and
   8) peer relationships, especially during adolescence. *Foster Families, supra* at XX(J).

Secondly, specific management services should be provided when necessary. The agency should handle medical emergencies and offer health services such as medical, dental, psychiatric, and psychological care. The agency should provide access to special services and educational facilities for mentally retarded and physically handicapped juveniles. *See* 20 U.S.C. 1401 *et. seq.* (Education for All Children Act). Educational programs should be designed to fit individual needs and should include vocational training. These rights are based on the philosophy of providing a basic level of services for juveniles in residential facilities. *See* Standard 4.410 and Commentary.

The *Foster Family, supra* standards advocate placing children with special problems in foster homes with parents who can provide specialized foster family service and recommend that the agency recruit foster parents who may have a special ability to care for children with special needs. *See also* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.10 and Commentary. The "treatment" offered in these homes is the type of care a natural family would give to a handicapped child. Children with special problems require special assistance. Certainly, major physical therapy or education should not take place in the home. Nevertheless, just as a parent would assist the learning process of a child who has no handicap, the foster parent should be expected to assist in the teaching of certain self-help skills and in performing simple medical procedures if the result would be the placement of a child in foster care rather than an overly restrictive medical institution. As such, it is consistent with the standard to utilize special foster homes for the care of handicapped children.

The use of the foster home as a "treatment" family care home is currently being explored by many child welfare agencies. In these programs, the foster parents are active members of the treatment team and receive training through specifically tailored educational programs. An agency support system is used to help the foster parents and they usually receive financial help. J. Bauer and W. Heinke, "Treatment Family Care Homes for Disturbed Foster Children," *55 Child Welfare* 478 (1976). Such programs are to be encouraged and may in fact be required by the concept of least restrictive alternatives. *See* Standard 4.410 and Commentary.

Related Standards

1.124	Provision of Financial and Technical Resources
1.125	Evaluation of Local and State Efforts
4.25	Foster Homes
4.251	Staff
4.41-4.411	Rights of Juveniles
4.51-4.54	Discipline
4.61-4.62	Use of Restraints
4.71-4.73	Transfer Procedures
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.26 Dentention Facilities

A detention facility is a secure institution which is used for the temporary custody of juveniles accused or adjudicated of conduct subject to the jurisdiction of the family court over delinquency and who cannot be placed in an open setting. Detention facilities should be used to care for such juveniles following arrest, prior to adjudication, prior to disposition, and following disposition while awaiting transfer to the facility of placement, and may also be used for the temporary custody of such juveniles:

a. Pending a hearing to modify or enforce a dispositional order pursuant to Standards 3.189 and 3.1810;
b. Pending extradition pursuant to the interstate compact on juveniles; or
c. Pending return to a residential facility from which they have absconded following placement.

Detention facilities should be located within the community from which they draw their population. Such facilities should not be on the grounds of an institution used to house adults accused or convicted of committing a criminal offense.

Sources:

See generally National Council on Crime and Delinquency *Standards and Guides for the Detention of Children and Youth* (1961); Law Enforcement Assistance Administration, *Planning and Design for Juvenile Justice,* Part IV (1972); S. Norman, *Detention Practice,* (1960); *Martarella v. Kelley,* 349 F. Supp. 575 (S.D.N.Y. 1973); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Architecture for Group Homes and Secure Detention and Correctional Facilities,* Standard 7.4 (draft, 1976); and *Proposed Standards Relating to Interim Status,* Standard 10.2 (draft, 1975) [hereinafter cited as IJA/ABA, *Interim Status*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 22.3 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard defines "detention facility" and narrowly defines the category of juveniles who may be held in such temporary custody. Under this standard, a "detention facility" is any locked or otherwise secure institution used for the temporary custody of juveniles. This standard limits those who may be placed in such facilities to those who are accused or adjudicated of a delinquent act, and who cannot be placed in an open setting. The standard also recommends that juvenile detention facilities should be situated within the community of the juvenile placed there, and specifies that such facilities should never be on the same grounds as a jail or prison housing convicted or detained adults.

The National Advisory Committee intends that the temporary, "interim" detention of juveniles in secure facilities should occur only rarely, and that detention facilities should play a minor role in the juvenile process. Detention "should be brief, terribly selective and modest in its aims." Comment of Patricia Wald, IJA/ABA, *Interim Status, supra* at Standard 10.2. Accordingly, this standard does not authorize—and Standards 3.153 and 3.154 expressly prohibit—placing youths not adjudged or accused of delinquency in any secure detention center. *See* Standards 3.153, 3.154 and Commentary. Standard 3.152 strictly limits the factual circumstances under which even those juveniles charged with delinquent acts may be detained in secure facilities. *See* Standard 3.152 and Commentary. To reinforce the principle that a youth's stay "in detention" should be brief, the family court must hear and resolve the petition expeditiously, *see* Standard 3.161, and the necessity for detention is subject to weekly reviews, *see* Standard 3.158. Thus, under these standards, secure detention facilities should play a minor role, and have a minimum of impact upon the total population of court-involved juveniles.

Although its use can and should be thus minimized, the detention facility remains the "gateway to the juvenile justice system for a group of offenders in the most serious trouble." Law Enforcement Assistance Administration, *Study on Planning and Design for Juvenile Justice, supra.* As of today, only four states prohibit absolutely the detention of juveniles in adult facilities. *See Report of the Task Force, supra* at Commentary to Standard 22.3; IJA/ABA, *Interim Status, supra* at Commentary to Standard 10.2; and C. F. Klejbuk and B. Rosenberg, *The Juvenile Status Offender and the Law: Abstract,* 14 (Pennsylvania Joint Council on the Criminal Justice System, April 1977) The remaining states and the District of Columbia permit the placement of juveniles in adult jails, with the condition that such youths are to remain "separate and apart" from the adults. Of these remaining jurisdictions, fourteen allow the detention of juveniles in adult facilities only when no juvenile facility is available; two states require that the juvenile be charged with a felony; and seven states have a minimum age limit below which a child cannot be held in an adult facility. *See* Klejbuk and Rosenberg, *supra* at 14.

The "separate and apart" provisions preferred to above have been generally unsuccessful in achieving their obvious objective. Where "joint" adult and juvenile facilities exist, statutory mandates that juveniles not be held together with adults have failed more often than not to achieve substantial separation of youths from adults. For example, in a national study of 449 jails conducted by the Children's Defense Fund, "separate and apart" provisions were on the books in all of the states visited. However, of the jails for which useable information was obtained, only 35.9 percent could assure substantial separation of juveniles from adults. Another 42.3 percent of the jails provided only partial separation. And fully one-fifth (21.8 percent) of the jails studied could assure no separation whatsoever. *See* Children's Defense Fund, *Children in Adult Jails*, 32-33 (1976). Because of the repeated failure of such "separate and apart" statutes to achieve their objective, the National Advisory Committee here explicitly recommends that juvenile detention facilities should not even be located on the same grounds as an adult institution. For the same reasons, the IJA/ABA Joint Commission expressly prohibits the detention of accused juveniles "in any facility or part thereof also used to detain adults . . ." IJA/ABA, *Interim Status, supra* at Standard 10.2 and Commentary.

The National Advisory Committee believes that confinement of any juvenile in an adult jail is undesirable and potentially destructive. Conditions in jails throughout the United States are generally poor; jails are overcrowded, understaffed, and often are bereft of training or recreational facilities. Lack of supervision is frequently an invitation to abuse of juveniles by adult inmates. *See generally* R. C. Sarri, *Under Lock and Key*, 65-66 (1974). Suicide by youths held in adult facilities has been a recurring but unheeded reminder of the unthinkable pressures brought to bear upon juveniles in such an environment. *Id.* The courts have also recognized the seriousness of this problem. For example, a federal district court in Illinois recently extended the prohibition against jailing juveniles to those youths who have been transferred or "waived" to the adult criminal court for prosecution as adults. *Swansey v. Elrod*, 386 F. Supp. 1138 (N.D. Ill. 1975). In *Swansey*, the court credited expert testimony to the effect that to confine a "waived-over" juvenile in the Cook County Jail would cause a ". . . devastating, overwhelming, emotional trauma with potential consolidation of [these youths] in the direction of criminal behavior . . . *See* National Juvenile Law Center, *Children in Jails: Legal Strategies and Materials*, 11 (1972).

Because of the tenacity and scope of this problem, which reformers first addressed in 1899, the National Advisory Committee does not anticipate that eliminating the jailing of juveniles will be easy. For example, even with an injunction placed upon the Cook County Jail by the Federal Court in *Swansey*, Illinois during 1977 detained 3,354 juveniles in other county jails throughout the state, and 8,288 juveniles in municipal jails and lockups. Bureau of Detention Standards and Services, Illinois Department of Corrections *FY 1977 Annual Report*, 19 and 46 (1977). Concerted efforts at all levels will be necessary before the disconcerting phenomenon of a juvenile locked in jail is a thing of the past in this country.

Related Standards

1.41	Personnel—Selection
1.425	Personnel Providing Direct Services to Juveniles
1.428	Personnel Providing Support Services in Residential Programs
3.151	Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152	Criteria for Detention in Secure Facilities—Delinquency
3.153	Criteria for Detention in Secure Facilities—Noncriminal Misbehavior
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
4.11	Role of the State
4.21	Training Schools
4.24	Community Correctional Facilities
4.261	Detention Facilities—Size
4.262	Detention Facilities—Staff
4.263	Detention Facilities—Services
4.71	Transfers from Less Secure to More Secure Facilities
4.72	Transfers from More Secure to Less Secure Facilities

4.261 Size and Population

The population of a detention facility should not exceed twenty. Detention facilities should make provision for and be co-educational in nature.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Architecture for Group Homes and Secure Detention and Corrections Facilities,* Standard 7.3 (draft, 1976). *See generally* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.1 (1976).

Commentary

This standard recommends that no single detention facility should house more than twenty juveniles. Other standards-setting groups have suggested maximum population sizes ranging from twelve youths to thirty youths within a single detention facility. *See, e.g.,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.2 and Commentary (draft, 1976) [hereinfater cited as IJA/ABA, *Corrections Administration*]; The National Advisory Committee on Criminal Justice and Goals, *Corrections,* Standard 8.3, (1976); J. J. Downy, *State Responsibility for Juvenile Detention Care* (1970).

After reviewing all positions, the National Advisory Committee concluded that a detention facility should be comparable in size to a living unit within a training school. *See* Standard 4.2112 and Commentary. By limiting the population to a maximum of twenty, and by utilizing the staff-to-juvenile ratio required for training schools, *See* Standards 4.262 and 4.2122, this standard provides the highest degree of service to youths consistent with maintaining security. *See also* Standards 4.2112, 4.2191, and 4.221.

Limiting the maximum number of youths in each detention facility to twenty will provide an atmosphere that will minimize the uncertainty, disorientation, and alientation of the juvenile detained. *See* Law Enforcement Assistance Administration, *Planning and Designing For Juvenile Justice,* 66-104 (1972). Although twenty residents is the stated maximum, the National Advisory Committee strongly recommends that if smaller-scale detention facilities with fewer residents can be made available, those smaller-scale facilities should be utilized. In terms of numbers of residents in a single facility, "the smaller the better" should be operative philosophy for detention facilities, just as for training schools. *See* Standards 4.2112, 4.2191, and 4.221. Realistically, no detention facility can create a truly "home-like" atmosphere. Nonetheless, in a smaller-scale facility the environment is likely to be less trying, less alienating, less impersonal, and less "institutional" than in the larger, traditional detention "center."

This standard also recommends that detention facilities be co-educational. These standards are designed as much as possible to maintain the detained youth's contact with his/her community, and the continuity of the youth's primary relationships—of which relationships with both sexes are an important part. *See* IJA/ABA, *Corrections Administration, supra* at Commentary to Standard 7.3. No detention facility can maintain a youth's contact with the community and normal development as a person if peers of the opposite sex are excluded from the facility. The *Report of the Task Force, supra* has aptly stated:

> ("C)o-educational residential facilities would have the capability to focus on the juvenile delinquent as an individual and provide the most appropriate and least restrictive placement based on community protection considerations and client service . . . (T)his would abandon the concept of separate institutions based on sex and . . . would provide an institutional environment more like the community environment." *Report of the Task Force, supra* at Commentary to Standard 24.1.

Both the Task Force and the IJA/ABA Joint Commission are in accord with the recommendations of the National Advisory Committee that detention facilities be co-educational. *See Report of the Task Force, supra;* and IJA/ABA, *Corrections Administration, supra* at Standard 7.3.

Architects and designers of detention facilities should seek to afford each juvenile the greatest amount of individual freedom consistent with a reasonably "secure" setting. To this end, architectural strategies should include heightening space to increase a sense of spaciousness and to allow variety, encouraging variety and diversity by use of varying furniture arrangements, and increasing the control and influence which the youth residents can exercise in his/her physical environment. *See* Law Enforcement Assistance Administration, *Planning and Designing For Juvenile Justice,* 66-104 (1972). The facility's design should support and facilitate reasonable behavior by residents, should provide meaningful choices in terms of individual behavior and activities, and offer opportunities in varied settings for regular interpersonal contact with other juveniles and with the facility's staff.

The recommended physical setting with a specific twenty-resident limit, should enable staff and juveniles to make the most of whatever time the juvenile must spend in such facilities. Opportunities for modifying—and, perhaps, dismissing—petitions alleging delinquency should be available for juveniles who function effectively in the small, human-scaled supportive detention facilities which these standards seek to provide. *See* LEAA, *Planning and Designing For Juvenile Justice, supra.*

Related Standard

1.125	Evaluation of Local and State Efforts
1.41	Personnel—Selection
1.425	Personnel Providing Direct Service to Juveniles
1.428	Personnel Providing Support Services in Residential Programs
3.151	Purpose and Criteria for Detention and Conditioned Released—Delinquency
3.152	Criteria for Detention in Secure Facilities/Delinquency
3.153	Criteria for Detention in Secure Facilities/Noncriminal Misbehavior
3.154	Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
4.11	Role of the State
4.21	Training Schools
4.211	Physical Characteristics and Population
4.2111	Location
4.2112	Size and Design
4.212	Staff
4.2121	Staff Size
4.2122	Staff Qualifications
4.24	Community Correctional Facilities
4.26	Detention Facilities
4.262	Detention Facilities—Staff
4.263	Detention Facilities—Services

4.262 Staff

At a minimum, each detention facility should have one (1) full-time recreation worker, one (1) full-time teacher for each ten (10) juveniles, and two (2) child-care workers on duty at all times.

The qualifications for these staff positions should be the same as those set forth in Standard 4.2122.

Sources:

See generally Martarella v. Kelley, 349 F. Supp. 575, 586-590 (S.D.N.Y. 1972).

Commentary

This standard applies to detention facilities the same minimum staff-to-youth ratio (approximately 1:2) which Standard 4.2121 applies to training schools. *See* Standard 4.2121 and Commentary. The recommended 1:2 ratio provides a high degree of service to the youths, while maintaining tight security. The low staff-to-juvenile ratio recommended here permits a close working relationship between the juvenile and staff, and may stimulate positive behavior by the juvenile prior to final adjudication, transfer, permanent institutionalization, or release, *See* Commentary to Standard 4.261.

Many courts have held that the provision of adequate services in detention facilities is constitutionally mandated based upon the Eighth and Fourteenth Amendments. The courts have reasoned that:

> where the state, as parens patriae, imposes . . . detention, it can meet the Constitutional requirements of due process and prohibition of cruel and unusual punishment, if, and only if, it furnishes adequate treatment to the detainees. *Martarella v. Kelley*, 349 F. Supp. 575, (S.D.N.Y. 1972).

Accordingly, the Federal District Court in *Martarella* required that detention facility staff be sufficient in numbers, adequately trained, and knowledgeable about juvenile problems. *Id.* The provisions of this standard amply meet the requirement set out in *Martarella*.

Although detention facilities should not be considered primarily as "treatment" facilities, *see* Standard 4.263, the National Advisory Committee is convinced that treatment can begin in appropriate temporary detention facilities. *See Martarella.* The National Advisory Committee is equally convinced that the prospects for treatment and rehabilitation of many youths can and have been needlessly sacrificed during periods of "temporary detention."

This standard attempts to provide the basic educational necessities for juveniles in short-term detention facilities and other services by child-care workers who are trained to deal with the special problems of juveniles detained in such facilities. *See* Standard 4.263. This standard also establishes specific minimum job qualifications for staff positions in detention facilities. The standard specifically incorporates the minimum job requirements established in Standard 4.2122 for the analogous staff positions in training schools. *See* Standard 4.2122 and Commentary.

This standard recommends that the complement of full-time staff at each detention facility should be as follows: one full-time recreation worker, one full-time teacher for every ten juveniles, and two child-care workers on duty at all times. Obviously, the "training school" model, *see* Standard 4.2121, cannot here be applied directly to detention facilities, since training schools may comprise as many as ten to twenty individual living units—and up to a total of 100 juveniles within a single school. In contrast, each detention facility contemplated by these standards is a discrete independent facility—no larger than any single living unit at a training school. Thus, a single detention facility cannot approximate the breath and diversity of full-time personnel which should be regularly and immediately available at a training school. *See* Standard 4.2121, 4.263 and Commentary.

Needed services for juveniles which cannot be provided by regular detention facility staff should be provided from the community on a volunteer or contract-for-services basis. *See* Standard 4.263. It should be noted that a youth's need for psychiatric and other "treatment" aspects of juvenile confinement must, of course, have some foundation in fact. *See generally Martarella.* Although detention facilities are not primarily treatment facilities, any necessary specialized services, including medical, psychiatric, and special supplementary educational and recreational services, should be made available from the community. *See* Standard 4.263 and Commentary. For certain common and recurring needs, e.g., medical and psychiatric needs, individual detention facilities within a single locality might contract jointly with an appropriate, centrally-located hospital or other service provider. *See* Commentary to Standard 4.263.

In order to maintain the high staff quality mandated throughout these standards, a regular inservice training program similar to that recommended for training school staff, *see* Standard 4.2121, is recommended. Staff members should be required to attend at least forty hours yearly of either relevant formal classwork, or of inservice training programs specifically designed for the education of such staff. *See generally* Standard 4.2121 and Commentary.

Related Standards

1.125 Evaluation of Local and State Efforts
1.41 Personnel—Selection
1.425 Personnel Providing Direct Service to Juveniles
1.428 Personnel Providing Support Services in Residential Programs
3.151 Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152 Criteria for Detention in Secure Facilities—Delinquency
3.153 Criteria for Detention in Secure Facilities—Noncriminal Misbehavior
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
4.11 Role of the State
4.21 Training Schools
4.211 Physical Characteristics and Population
4.2111 Location
4.2112 Size and Design
4.212 Staff
4.2121 Staff Size
4.2122 Staff Qualifications
4.24 Community Correctional Facilities
4.26 Detention Facilities
4.262 Detention Facilities—Staff
4.263 Detention Facilitie—Services

4.263 Services

Although detention centers should not be considered as treatment facilities, detained juveniles should be provided with educational, medical, recreational and other services appropriate to their needs, and an adequate and competent staff.

Upon admission, or as soon as possible therafter, there should be an assessment of a juvenile's needs including an examination by a physician within twenty-four hours of admission, and a determination of the juvenile's educational level.

Contractual arrangements should be made with a nearby hospital for all medical services which cannot be appropriately provided within the facility or where contractual arrangements can result in better or a broader range of services. A medical record should be maintained and all needs should be provided for pursuant to the physician's instructions. Each juvenile should also be afforded reasonable access to psychiatric counseling and crisis intervention services in accordance with his/her needs.

The educational program provided in detention facilities should seek to assist detained juveniles to keep up with their studies to the greatest extent possible. Remedial education services should be provided for those juveniles who require it.

The recreational program should provide opportunities for exercise and constructive leisure-time activity. At least two hours of recreation should be provided on school days, and three hours of recreation on nonschool days, not including unsupervised periods spent primarily in such activities as watching television.

Sources:

See generally Martarella v. Kelley, 349 F. Supp. 575, 586-590 (S.D.N.Y. 1972).

Commentary

This standard seeks to guarantee that detained juveniles will receive appropriate medical and psychiatric treatment, educational services, and recreational opportunities. Juveniles are "detained" when they are held temporarily in a locked or otherwise secure facility while awaiting trial, a dispositional hearing, or under the other circumstances set out in Standard 4.26; *see also* Standard 3.152. The dictates of decency and fundamental fairness require that juveniles must be furnished with necessary and adequate services and treatment if they are detained. *See, e.g., Martarella v. Kelly,* 349 F. Supp. 575 (S.D.N.Y. 1972). *See also* Standard 4.410.

Because the juvenile is detained only temporarily, the availability of plenary services on the immediate premises of the detention facility is not necessary. Indeed, any requirement that plenary "institutional"-type services be available to all detainees would frustrate progress toward the smaller, less institutional, twenty-juvenile detention units recommended in Standard 4.261. However, where medical, pscyhiatric, educational or other needed services are not readily available at the detention facility itself, this standard would require that contractual arrangements be made with private community-based service providers in order to achieve the necessarily broad spectrum of services. *See particularly,* Commentary to Standard 4.262. *Accord,* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.1 and Commentary (1976) [hereinafter cited as *Report of the* Task Force]; and Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 7.3 and Commentary (draft, 1976). Existing community resources should be utilized and should not be duplicated unnecessarily by public facilities. *Accord, Report of the Task Force, supra.*

This standard requires medical and educational examinations immediately upon admission of a youth to any detention facility. Those medical and educational examinations are necessary to determine whether the juvenile has been placed in an appropriate setting. If a particular juvenile has special medical or other needs that cannot be accommodated in a detention facility, the Fourteenth Amendment's due process clause and Eighth Amendment's prohibition of cruel and unusual punishment might be violated if the juvenile were held in such a facility. *See Martarella,* 349 F. Supp. at 586-87; Standard 4.410 and Commentary. In particular, the "importance of psychiatric facilities for children whose behavior is by definition socially maladjusted is obvious." *Martarella.* This standard specifically provides for psychiatric and crisis intervention services in accord with the juvenile's needs.

The juvenile in temporary custody in a detention facility will be unable to attend his/her regular school during the period of detention. However, every effort should be made to offer detained juveniles a realistic means of keeping up with their studies pending the outcome of their particular case. In addition, remedial education and appropriate special education for the handicapped should also be provided—preferably through the contractual arrangements with private services providers recommended here. *See particularly* Commentary to Standard 4.262.

A recreational program is required by this standard, and specific minimal time periods for recreation are defined. Traditionally, juvenile "detention centers" and other detention facilities did not permit or facilitate recreation of any kind. However, courts have recently held that to deny a young person recreational outlets amount to cruel and unusual punishment. *See, e.g., Martarella.* For example, in *Martarella* the Federal District Court stated that for a juvenile to exist without some opportunity for recreation "would be intolerably dreary, in the shear residential detention would clearly constitute . . . cruel and unusual punishment . . ." *Id.* at 590. In the past, unsupervised periods watching television have often been used as poor substitutes for more genuine, creative, energy-venting forms of recreation. To prevent such practices, the fifth paragraph of this standard specifically requires two or three hours daily of exercise, "*not including* unsupervised periods spent primarily in such activities as watching television." (emphasis added). Obviously, youth who are not provided with—or do not avail themselves of—educational or other constructive nonrecreational activities, should be afforded far more time for recreation than the two and three-hour minima provided under this standard. This standard also recommends that a thorough evaluation of the staff and services at detention facilities, *see also* Standards 4.26-4.262, should be conducted in accordance with Standard 1.125.

Related Standards

1.41 Personnel—Selection
1.425 Personnel Providing Direct Services to Juveniles
1.428 Personnel Providing Support Services in Residential Programs
3.151 Purpose and Criteria for Detention and Conditioned Release—Delinquency
3.152 Criteria for Detention in Secure Facilities—Delinquency
3.153 Criteria for Detention and Release—Noncriminal Misbehavior
3.154 Criteria and Procedures for Imposition of Protective Measures in Neglect and Abuse Cases
3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184 Dispositional Alternatives and Criteria—Neglect and Abuse
4.11 Role of the State
4.21 Training Schools
4.24 Community Correctional Facilities
4.26 Detention Facilities
4.261 Detention Facilities—Size
4.262 Detention Facilities—Staff

4.27 Shelter Care Facilities

A shelter care facility is a nonsecure residential program used for the temporary custody of juveniles.

Neglected or abused children may be placed in shelter care facilities. However, they should not be commingled with juveniles accused or adjudicated of conduct constituting a delinquent offense or noncriminal misbehavior.

A broad range of facility types may be used to provide shelter care. These programs should be in the communities from which they draw their population and should serve no more than twenty juveniles.

The staff ratios and services offered should depend upon the size and type of program, but should provide, at a minimum, a level of services equivalent to that set forth in these standards for foster homes and group homes.

Shelter care facilities should not be characterized by physically restrictive construction or location, or by procedures designed to prevent the juveniles from departing at will. The emphasis in shelter care facilities should be on an open setting, a healthy living environment, and utilization of community resources. However, there should be procedures and resources available to protect the residents from themselves and others.

Source:

See generally 42 U.S.C. 5712 (Supp. 1976); *N.Y. Official Compilation of Codes, Rules and Regulations,* Chapter I, pt. 9, Sec. 9.1-9.31 (1977).

Commentary

This standard recommends the establishment of shelter care facilities to house children in need of temporary residential care. The standard recommends that there be no commingling between neglected juveniles and those accused or adjudicated of a delinquent offense or noncriminal misbehavior. The standard suggests the use of community-based, small, residential facilities and suggests foster and group homes as models for the type of facility and the type of services which should be provided. As with foster and group homes, the standard emphasizes the importance of an open and healthy setting, limited population and ties to the community.

Shelter care has provided a solution for the widespread problem of runaway youths. As part of the Runaway Youth Act of 1974, codified at Title III of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C.A. §5712, a funding program was created to establish, strengthen, or fund an existing or proposed locally-controlled facility providing temporary shelter for runaways and to provide counseling services to them. The shelter care facility contemplated by the standard is the same kind contemplated by the statute. It may be used as a temporary residence for runaways pending return to their parents or formal petitioning in the family court. The facility may also be used to house juveniles subject to family court proceedings who are awaiting trial or placement in a more permanent facility. Since a shelter facility can be used to house children subject to any kind of petition, the standard discourages commingling between neglected and/or abused children with juvenile delinquents or those involved in noncriminal misbehavior. Runaways from other jurisdictions awaiting transportation should be similarly segregated. By doing so, unsophisticated children will be protected from harm and negative influences. Further, neglected children will not be given the impression that they are at fault or being punished. *See also* New York Compilation of Codes, Rules and Regulations, §9.5.

The standard recommends that a shelter care facility be community-based. A juvenile placed in shelter care is not a security risk and consequently should reside in a facility similar to a foster or group home. The resources of the community are valuable assets to these juveniles. *See* Standards 4.23, 4.24, 4.25, and Commentaries.

The standard recommends that the population of a shelter care facility be no more than twenty. This number is larger than for foster and group homes, *See* Standard 4.231, 4.25, but in accord with limits established by the Runaway Youth Act, *supra.* A maximum population of twenty is small enough to maintain a close and controlled relationship between the staff and the juvenile and discourages a regimented and impersonal lifestyle. *Id.* Since shelter care is only a temporary placement, the somewhat larger maximum population will not adversely affect the juvenile.

The Runaway Youth Act provides that a shelter care facility have a ratio of staff-to-juveniles sufficient to assure adequate supervision and treatment. The standard also requires staff ratios and services commensurate with the size and type of program. At a minimum, services offered should be equivalent to those available in foster and group homes. *See* Standards 4.223 and 4.252. These services include shelter, food, recreation, temporary financial assistance, individual and/or group counseling, medical, and dental care, psychological evaluation, employment services and academic training. *See* Standard 4.233.

The standard discourages the use of a shelter care facility which has a physically restrictive construction or location, or the implementation of procedures designed to prevent the juveniles from departing at will. The rationale for this position is the preservation of an open setting for children who pose no

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great security risks. Further, detention facilities provided by Standards 4.26-4.263 are better suited for juveniles in need of more secure confinement. The standard does not, however, recommend that all elements of control disappear. Residents must still be protected and controls must be set. The controls should resemble those established for group homes.

Related Standards

4.23	Group Homes
4.231	Group Homes—Size
4.232	Group Homes—Staff
4.233	Group Homes—Services
4.25	Foster Homes
4.251	Foster Homes—Staff
4.252	Foster Homes—Services
4.26	Detention Facilities
4.261	Detention Facilities—Size
4.262	Detention Facilities—Staff
4.263	Detention Facilities—Services
4.41-4.411	Rights of Juveniles
4.51-4.54	Discipline
4.61	Mechanical Restraints
4.62	Medical Restraints
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.3 Nonresidential Programs

4.31 Community Supervision

A system of community supervision services should be provided by the state agency described in Standard 4.11 to supervise persons adjudicated pursuant to the jurisdiction of the family court over delinquency, noncriminal misbehavior, and neglect and abuse. Community supervision personnel should be state employees. The services should be decentralized with sufficient personnel assigned to each family court to assure that the number of active cases for which each community supervision officer is responsible averages no more than twenty-five. However, there should be sufficient flexibility in case assignments to permit caseloads as low as twelve when the cases require intensive supervision, and as high as forty, when only minimal supervision is required.

In sparsely populated areas, regional community services offices should be established to serve several family courts.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile and Delinquency Prevention,* Standards 23.1 and 23.5, and Commentary (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard recommends that the state agency provide a system of decentralized community supervision services to certain specified juveniles for whom such services are appropriate. *Accord, Report of the Task Force, supra* at Standard 23.1 and Commentary. The National Advisory Committee believes that centralized, statewide controlled and coordinated supervision services can best assure adequate personnel training, statewide consistency in procedures and treatment, efficient distribution of services, and comprehensive planning. *See* Standard 4.11 and Commentary. To ensure this centralized control over community supervisory services, this standard would provide that each community supervisor must be a state employee. To guarantee flexibility among localities, this standard also provides that each community supervisor should be directly assigned to serve the jurisdiction of a particular family court. Responsiveness to local needs can be achieved by decentralization within the total statewide system. *Accord, Report of the Task Force, supra* at Standard 23.1 and Commentary. *See also* Standard 4.11, *supra.*

The National Advisory Committee, like the Task Force, was concerned about an absence of consistent criteria bearing upon which juveniles best can benefit from intensive community supervision. *See Report of the Task Force, supra* at Commentary to Standard 23.5. The National Advisory Committee concluded that a rough classification system, akin to trianing in the medical professions, might be the most logical and feasible method for determining appropriate levels of supervision for particular juveniles. *Accord, Report of the Task Force, supra* at Standard 23.5 and Commentary. As the Task Force has pointed out, some juveniles may benefit tremendously from extended counseling sessions. Other juveniles cannot benefit from lengthy personal counseling but may benefit from specific vocational counseling or other specific services which require less time of the community supervisor.

This standard recommends an average caseload figure of twenty-five clients for community supervisory personnel assigned to the family court. For juveniles needing only the most minimal supervision, a maximum supervisor-to-juvenile ratio of 40:1 is established. The average caseload figure of twenty-five juveniles tracks the similar recommendations of other standards-setting groups. *See, e.g., Report of the Task Force, supra* at Commentary to Standard 23.5. With a caseload of twenty-five clients, a community supervision worker is, on the average, not able to spend more than 1.5 hours per month in face-to-face contact with his/her juvenile client. *Report of the Task Force, supra* at Commentary to Standard 23.5. This is because community supervisory personnel spend large amounts of time in the community, dealing and communicating with teachers, parents, mental health personnel, doctors, job placement personnel, welfare and other social agencies personnel. *See Report of the Task Force, supra.* Supervisory personnel also necessarily expend many hours writing probation reports, making court appearances, and otherwise communicating with the family court. Thus, although the 25:1 ratio recommended here is lower than the prevailing national average, even this "low" supervisory ratio will be inadequate to meet the supervisory needs of many juveniles. *Accord, Report of the Task Force, supra.* The National Advisory Committee seriously considered recommending an average caseload of fewer than twenty juveniles per worker, but discarded this figure as unrealistic in light of shrinking resources available for human services generally. This standard does specify, however, that there should be enough flex in the case assignment system to permit caseloads as low as twelve when the cases require more intensive supervision. Alternatively, caseloads as high as forty may adequately serve youths needing only minimal supervision.

Related Standards

3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184 Dispositional Alternatives and Criteria—Neglect and Abuse
3.189 Review and Modification of Dispositional Decisions
3.1810 Enforcement of Dispositional Orders—Delinquency
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812 Review of Dispositional Orders—Neglect and Abuse
3.1813 Enforcement of Dispositional Orders—Neglect and Abuse
4.11 Role of the State
4.32 Nonresidential Programs—Services
4.33 Nonresidential Programs—Imposition and Enforcement of Regulations
4.81 Grievance Procedures
4.82 Ombudsman Programs

4.32 Services

A broad range of services should be available to persons subject to community supervision. Ordinarily such services should be provided by the community rather than directly by the supervision agency.

Upon placement under community supervision, the person supervised and, whenever possible, his/her family, should assist in the preparation of an assessment of needs and the development of a plan establishing the goals to be achieved during the supervision period.

The family court should have the authority to order supplemental services to families when such services are necessary to enable the juvenile or family to participate in a nonresidential program. Among the supplemental services which should be available are homemaker services for a juvenile's family and cash payments directly to the juvenile when supervised independent living is appropriate.

Whenever specific supplemental or other services ordered by the family court are not available, an application to review and modify the disposition decision should be submitted pursuant to Standard 3.189.

Sources:

National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Delinquency Prevention*, Standards 23.3, 23.4, 23.6, and 23.7 (1976) [hereinafter cited as *Report of the Task Force*].

Commentary

This standard would require that a broad range of services be made available to persons subject to community supervision. *See* Standard 4.31. The range of such services should be at least as broad as those available in the community at large. *Accord, Report of the Task Force, supra* at Commentary to Standard 23.4.

By specifying that such services should ordinarily be provided by and from the community, rather than directly by the supervision agency, the National Advisory Committee seeks to further many objectives. It is expected that provisions of supporting services from within the community will best maintain the youth's involvement with his/her community, *see* Commentary to Standard 4.31, will promote the youth's self-sufficiency and self-reliance, will enhance community involvement with the particular youth and with youth services generally, will reduce unnecessary duplication of services, and will increase the flexibility with which services plans can be tailored to the individual needs of particular juveniles. *See Report of the Task Force, supra* at Standard 23.4 and Commentary.

This standard recommends that an assessment of needs be prepared by the supervisor and the juvenile, with the participation of the juvenile's family whenever possible. *Accord, Report of the Task Force, supra* at Standard 23.3 and Commentary. The youth's needs assessment should at least include consideration of the following: medical problems; proximity of the program to the youth; the capacity of the youth to benefit from the program; and the availability of placements in the program, including the length of any waiting list for spaces. *See Report of the Task Force, supra.* The other assessment tools mentioned in Standard 4.2141, e.g., psychological testing and a family and developmental history, should also be considered as possible additional aids to needs assessment. *See* Standard 4.2141 and Commentary. Most fundamentally, the plan for the juvenile should arrive at a "realistic appraisal of the recommended services potential to assist the juvenile." *Report of the Task Force, supra* at Commentary to Standard 23.3.

This stardard also recommends that a juvenile and his/her family have access to supplemental services to facilitate the youth's participation in a nonresidential program. The family court should aggressively assume the duty to provide all such required services in direct proportion to the extent to which the court has imposed restrictions limiting a juvenile's liberty. *Accord, Report of the Task Force, supra* at Standard 23.4 and Commentary. Particularly, supplemental services which could enable the juvenile to remain at liberty at home or elsewhere in the community, and avoid placement in a residential facility, should be provided.

The standard specifically includes homemaker services as among the supplemental services which should be available. A homemaker service is a program designed to train persons in the practical daily tasks of maintaining a dwelling place, preparing meals, paying bills, and generally caring for oneself independently. Such a service may, and often should, include weekly or bi-weekly home visits. Homemaking services could help avoid the recurring tragedy of the independent, older adolescent who is forced into an institutional setting by the mere coincidence that the court has acquired jurisdiction over a youth who has no adult willing or able to take technical responsibility for his/her care.

Homemaker services can also serve to keep a child and parent together. This is particularly true where a youth's marginal criminality and a parent's marginal neglectfulness arise from the same factual syndrome. In such cases, supportive homemaker services can remove at least some of the incessant daily pressures which may be burdening the household. In this way, such services can re-establish a basis for mutal respect between parent and child, and thus avert the breakup of the family and the child's consequent institutionalization. Although intensive homemaker services are not inexpensive, they are relatively cheap compared to the monetary costs of institutionalizing a juvenile. Homemaker services are even more of a bargain when the social cost of institutionalization—the needless damage inflicted to family structures and to the fabric of our society—is figured into the equation. *See* J. Areen. "Intervention Between Parent and Child: A Reappraisal of the State's Role in Child Neglect and Abuse Cases," 63 Geo. L. J. 887, 915, 918-920 (1975). *See generally* J. Goldstein, A. Freud, and A. Solnit, *Beyond the Best Interests of the Child* (1973). For the reasons already set out, homemaker services, like other community supervision services, should, if possible, be secured within the juvenile's community, rather than directly by the supervising agency.

If certain services are not available, this standard requires that the agency administering the services should become an advocate before the court and seek review and appropriate modification of the youth's disposition order pursuant to Standard 3.189. *See generally Report of the Task Force, supra* at Standard 23.6. Supervisory agency personnel should be prepared to act agressively to assure that court orders for needed supplementary services are forthcoming. Of course, supervisory personnel should also immediately alert the youth's attorney as soon as any need for supplemental services is perceived. The Task Force similarly requires that community supervision personnel advise the court if required services are not being provided. *See Report of the Task Force, supra* at Standard 23.4 and 23.6.

Related Standards

3.181	Duration of Disposition and Type of Sanction—Delinquency
3.182	Criteria for Dispositional Decisions—Delinquency
3.183	Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184	Dispositional Alternatives and Criteria—Neglect and Abuse
3.189	Review and Modification of Dispositional Decisions
3.1810	Enforcement of Dispositional Orders—Delinquency
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812	Review of Dispositional Orders—Neglect and Abuse
3.1813	Enforcement of Dispositional Orders—Neglect and Abuse
4.11	Role of the State
4.31	Nonresidential Programs—Community Supervision
4.33	Nonresidential Programs—Imposition and Enforcement of Regulations
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.33 Imposition and Enforcement of Regulations

Community supervision officers should be authorized to impose reasonable regulations for persons under their supervision. Such regulations should be designed to implement the terms of the disposition imposed by the family court. Regulations affecting a juvenile should interfere as little as possible with the juvenile's school, regular employment, or other activities necessary for normal growth and development.

A copy and explanation of all terms and regulations should be provided to persons subject to community supervision and their modifications should be similarly provided and explained. Persons under community supervision should also be advised that failure to adhere to the terms of the dispositional order may result in initiation of the enforcement procedures described in Standards 3.1810, 3.1811, and 3.1813.

Sources:

See generally National Advisory Committee on Criminal Justice, Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 23.2, 23.6, and 23.7 (1976) [hereinfater cited as Report of the Task Force]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 6.2(e) (ii) (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*]; Arizona Rules of Criminal Procedure, Rule 27.1 (1973).

Commentary

Community supervision officers are authorized by this standard to impose reasonable conditions or restrictions in the form of regulations upon persons under their supervision. This authority should be exercised in a manner wholly consistent with terms of the court order, and should not be used to imposed conditions beyond the spirit and scope of that order. The National Advisory Committee felt it unnecessary and cumbersome to require express approval of such supervisory regulations by the court in every instance. The juvenile's legal counsel is, of course, free to return to court to challenge supervisory regulations as beyond the scope of the court's disposition order.

The terms and regulations by which the juvenile must abide during the supervisory period should be explained at the outset of the period. This explanation should be clear, complete, and communicated in the juvenile's primary language. *Accord, e.g.,* IJA/ABA, *Corrections Administration, supra* at Standard 6.2(e) (ii) and Commentary. Copies of any modifications in the regulations should promptly be given to the supervisee, and should be fully explained in terms comprehensive to the supervisee. *Id.*

Persons being supervised also must be notified at the outset of all possible consequences of noncompliance with the regulations imposed by their supervisory officer. Particularly, the persons supervised should immediately be told that failure to adhere strictly to the terms of the disposition order and regulations may result in enforcement proceedings similar to probation violation proceedings, and might culminate in a complete loss of liberty (in delinquency cases) or in more severe curtailments upon liberty. *See* Standards 3.1810, 3.1811, and 3.1813. *See Report of the Task Force, supra* at Standard 23.7 and Commentary. Unlike this standard, the Task Force recommends that, as a general rule, solely matters that would result in the filing of a petition if the juvenile were not already on "probation" under community supervision—i.e., only alleged matters which if true, would constitute new acts of noncriminal misbehavior—should be reported to the court by the supervisory officer for enforcement purposes. *See Report of the Task Force, supra* at Commentary to Standard 23.7. *Cf. Report of the Task Force, supra* at Standard 14.22. The National Advisory Committee felt that this limitation could, even as a "rule of thumb," unduly restrict the discretion of supervisory personnel, and would tend to keep the family court in the dark about relevant information about its supervisees. Naturally, trivial violations should not be referred automatically to the court for enforcement. *See generally* Standards 3.1810, 3.1811, and 3.1813.

The standard specifies that special care be taken by community supervision officers to avoid impeding their supervisees' educational or employment opportunities, or normal patterns of growth and development. Such care must be taken to insure that the supervisory officer considers the possible adverse consequences of routine regulations. For example, a regulation that requires a juvenile to report to his/her community supervisor in person after school, could prevent the juvenile from obtaining an after-school job, or from participating in beneficial interscholastic athletics.

The powers of the supervisory officer may include the power to take a supervisee back into formal custody, if necessary, and to conduct searches and seizures, but only upon probable cause to believe that a new violation of the law has occurred. *Accord, e.g., Report of the Task Force, supra* at Standard 23.6 and Commentary. *See also Report of the Task Force, supra* at Standard 23.7. Since the primary function of the community services officers is not to conduct searches or to make arrests, their powers should not extend to the carrying of firearms. *Id.* Community supervisors should be empowered and urged to return readily to court to recommend appropriate modifications of court disposition orders, and otherwise to petition the court on behalf of the juvenile. In particular, community supervisory personnel should be required to advise the court if a person under their supervision is not obtaining access to required services. *Accord, Report of the Task Force, supra* at Commentary to Standard 23.6. *See* Standard 4.32 and Commentary.

Related Standards

3.181 Duration of Disposition and Type of Sanction—Delinquency
3.182 Criteria for Dispositional Decisions—Delinquency
3.183 Dispositional Alternatives and Criteria—Noncriminal Misbehavior
3.184 Dispositional Alternatives and Criteria—Neglect and Abuse
3.189 Review and Modification of Dispositional Decisions
3.1810 Enforcement of Dispositional Orders—Delinquency
3.1811 Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.1812 Review of Dispositional Orders—Neglect and Abuse
3.1813 Enforcement of Dispositional Orders—Neglect and Abuse
4.11 Role of the State
4.31 Nonresidential Programs—Community Supervision
4.32 Nonresidential Programs—Services
4.8 Grievance Procedures and Ombudsman Programs
4.81 Grievance Procedures

4.4 Rights and Procedures

4.41 Mail and Censorship

A juvenile should have the right to send mail without prior censorship or prior reading. A juvenile should also have the right to receive mail without prior reading or prior censorship. However, if the facility suspects the delivery of contraband or cash, it may require the juvenile to open the mail in the presence of a staff member.

A juvenile should have the right to mail a minimum of two letters per week at agency expense and any number of additional letters at his/her own expense.

All cash sent to juveniles should be retained by the juveniles or held for their benefit in accordance with the procedures of the facility. However, such procedures should be in writing and approved by the agency.

Packages should be exempt from these provisions and be subject to inspection at the discretion of the facility

Sources:

New York Official Compilation of Codes Rules and Regulations, § 171.5 (1973); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.13 (1976) [hereinafter cited as *Report of the Task Force*]; Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 7.6 (draft, 1976) [hereinafter cited as IJA/ABA, *Correction Administration*].

Commentary

This standard recognizes the juvenile's need for and right to maintain contact with persons outside the institution and, importantly, asserts that he/she may do so with a reasonable degree of privacy. A facility may legitimately interfere with this privacy right by requiring the juvenile to open mail in the presence of a staff member when officials suspect that contraband or cash has been delivered in the mail. Packages, which are exempt from this provision, may be opened at the discretion of the facility.

In two fairly recent Supreme Court cases, the Supreme Court addressed the issues of censorship and inspection of adult prisoners' mail and found a First Amendment right in the person outside the facility, whether recipient or writer. *Procunier v. Martinez,* 416 U.S. 396 (1976), *Wolff v. McDonnell,* 418 U.S. 539 (1974). While the ruling of the Supreme Court is much more restrictive than the standard, it must be noted that the Court was discussing the right in the context of adult penal institutions and not small facilities for delinquent and neglected children. In *Procunier,* the Court held that censorship of incoming and outgoing mail in adult penal institutions must be tested against two criteria. First, the inspection must further an important governmental interest such as the preservation of security or internal order, discipline, or rehabilitation. Second, the limitation can be no greater than is necessary or essential to the protection of the interest. So long as the regulations further a governmental interest, are not related to the suppression of free speech and impose a restraint that is not broader than required, the censorship of mail in adult penal institutions is likely to be upheld.

As noted in both *Procunier* and *Wolff,* the Supreme Court addressed the rights of sentenced adults housed in state prisons. In the setting of a juvenile facility, where the population is small and is placed for rehabilitative rather than penal purposes, security issues are less significant. Therefore, censorship of mail should not generally be necessary. Indeed, this standard, like all others in the 4.4 series of standards, is intended to apply to all types of residential facilities described in the 4.2 series of standards, not just facilities for delinquent children. Since even training schools are limited to 20-bed units within a 100-person facility, the security needs of the facility which were noted by Supreme Court are not involved. Further, the rehabilitative model demands maximum access to the outside community.

Several cases concerning juvenile facilities have been construed consistently with Standard 4.41. In *Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds,* 535 F.2nd 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322 (1977), *remanded on rehearing,* 562 F.2d 993 (5th Cir. 1977) the power of the institution was limited to opening mail in the presence of the child for the sole purpose of examining it for contraband. In *Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind. 1972), *aff'd,* 491 F.2nd 352 (7th Cir.), *cert. denied,* 417 U.S. 976 (1974), the institution was enjoined from maintaining a correspondence list and from limiting the persons to whom a juvenile could correspond. Finally, in

Harris v. Bell, 402 F. Supp. 469, 474 (W.D. Mo. 1975), a consent decree was entered into providing that:

> "Incoming mail may be physically inspected for contraband in the presence of the juvenile-addressess; other than such physical inspection, no tampering, delaying opening, reading, copying, or censoring of any mail shall be permitted. Attorney-client mail shall be neither opened nor inspected. There shall be no limitation as to how often or with whom a child may correspond unless a complaint is received from the person being corresponded with."

Arguments have been advanced that an absolute ban on censorship of letters mights serve to encourage harrassment of witnesses and public officials. However, similar bans in New York and California have resulted in few incidents. Consequently, the reduction of friction at the facilities resulting from a lack of censorship substantially outweighs the minor problems which might result if a ban is imposed. A second argument in favor of consorship is that it's a vehicle through which staff can protect juveniles from disturbing news from home that might precipitate an overt reaction by the juvenile. Where censorship has been prohibited, the predicted side effects have not occurred while benefits have resulted. Certainly juveniles have to bear bad news and deal with their reactions as they occur. The harm caused when juveniles know that the most intimate and personal communications they receive from family and friends have been perused by staff is severe. Not only does such censorship tend to cut down on a juvenile's willingness to express his/her emotions and to encourage those writing to express theirs, but it is also humiliating, dehumanizing, and anti-therapeutic. Finally, positive social interaction within and outside the facility enhances the rehabilitative and reunification efforts of the facility and should be encouraged. The elimination of censorship furthers this goal.

This standard permits the juvenile to mail a minimum of two letters per week at agency expense and places no limit on the additional letters each juvenile may send at his/her own expense. A limit of one letter per week at agency expense may impose a hardship upon juveniles whose parents are divorced or separated. *But see New York Official Compilation of Codes, Rules and Regulations,* §171.5(c) (1973). Consequently, two letters provided at agency expense may be necessary to maintain family contact and enhance the rehabilitative reunification goal.

The provision concerning the juvenile's receipt of cash recognizes the real danger that money may be stolen or used inappropriately to enhance the recipient's status among his/her peers. To prevent this from occurring, juveniles should be required to surrender the cash received to the institution in accordance with procedures developed by the institution and posted in compliance with Standard 4.47. This provision, however, does not permit the facility staff to interfere with the delivery of mail suspected of containing cash. It only permits the staff to be present when the mail is opened and to develop a method of deposits and withdrawals. Of course, access to the cash should not be made difficult and regulations on its use should be minimal.

Packages are exempted from the provisions of this standard as they are potentially receptacles in which contraband might well be contained. *Accord,* IJA/ABA, *Corrections Administration, supra* at 7.6c; *New York Official Compilation of Codes, Rules and Regulations, supra* at §171.5(e); *Report of the Task Force, supra* at 24.13. *See also Bell v. Wolfish,* 441 U.S. 520 (1979). However, the juvenile should be present when packages are opened. Further this discretionary authority should not be read as an authorization to indiscriminately open all packages. Regulations established for the inspection of packages should insure that the interference be minimal and brief. The procedures should be posted in accordance with Standard 4.47.

The National Advisory Committee recommends the elimination of censorship in juvenile facilities as an action each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.123	Development of State Standards and Guidelines
4.11	Role of the State
4.21	Training Schools
4.219	High Security Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.47	Notice of Rules
4.82	Ombudsman Programs

4.42 Dress Codes

Juveniles should have the right to wear their personal clothing if they so choose, or wear combinations of their own clothing and clothing issued by the facility in cases where their own clothing does not meet all of their clothing needs. Clothing issued by the facility should be available to those children lacking personal clothing or who choose to wear issued clothing.

Juveniles should also have the right to wear items of jewelry. However, reasonable restrictions may be imposed which prohibit juveniles from possessing items of clothing or jewelry that could be used to inflict bodily harm on themselves or others. Any time a restriction is placed upon the wearing of jewelry or clothing, a report should be forwarded to the ombudsman.

Source:

N. Y. Official Compilation of Codes, Rules and Regulations, §171.2 (1973); Institute of Judicial Administration/American Bar Association Joint Commission Juvenile Justice Standards and Goals, *Proposed Standards Relating to Correctional Administration,* Standard 7.6(I) (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*].

Commentary

This standard recognizes the right of juveniles to wear their own clothing and jewelry within the facility; it also acknowledges the obligation of the facility to provide clothing for the children and the power to impose reasonable restrictions upon the possession of items of clothing and jewelry.

The purpose of this standard, as well as that of Standard 4.43, is to allow children to maintain individuality in their personal appearances and to stimulate self-pride and normalization. Indeed, the development of self-esteem and individuality through interest in appearance and grooming is to be encouraged rather than discouraged in juvenile facilities. *See N.Y. Official Compilations of Codes, Rules and Regulations,* §171.2(g) (1973).

Personal selection of clothing is important to all young people and becomes particularly so when they have been placed in a facility and removed from family and friends. Such clothing heightens the children's sense of dignity and individuality and strengthens their identification with their home community. Alterations in clothing, such as embroidery or patchwork, should be allowed, again to enhance personal self-esteem as well as diversity. *See* Children's Bureau, U.S. Department of Health, Education and Welfare, *Institutions Serving Children,* 96 (1973). Above all, children should not be compelled to wear degrading, poorly fitted uniforms or "breeze attire," oversized pants with no belts, shoes without laces, or pajamas, which are sometimes required when escapes are suspected. IJA/ABA, *Corrections Administration, supra* at Standard 7.6(I).

It is often the case, however, that children arrive at the facility with insufficient clothing to meet their needs. It is then that the facility's responsibility to provide clothing arises. Clothing must also be provided for those children who prefer to wear issued clothing. The facility should make funds available for the purchase of clothing which is varied so as to avoid an institutional appearance. IJA/ABA, *Corrections Administration, supra* at Standard 7.6(I). Street clothes are especially important as the children become more involved with the community. Since this standard is applicable to all residential facilities, it is essential that the clothing provided by the facilities resemble to the greatest extent possible, clothing worn by other children in the community. To the extent that training schools issue clothing that is not completely suitable for wear in the community, additional clothing should be purchased by the facility and issued to those children released from the training school or to those participating in some community activities while residing in the training school. IJA/ABA, *Corrections Administration, supra* at Standard 7.6 (I). It would be preferable if the clothing provided by the institution was selected by the juvenile from community clothing services; however, it is acknoweldged that state purchasing practices may not permit this in all jurisdictions. Where such purchasing is not permitted, facilities should be encouraged to seek private donations so that a clothing fund can be created for the purchase of street clothes for juveniles who have little clothing other than that issued by the facility. Another approach would be to modify state or agency purchasing practices to provide greater variety in bulk clothing purchases.

Juveniles should be responsible for the care and cleaning of personal clothing which cannot be washed together with the regular facility laundry. Because of the restraints that a facility may place upon the movement of children, this directive presupposes that the facility has an obligation to provide the children with reasonable means to clean their clothing. *See N.Y. Official Compilations of Codes, Rules and Regulations* §171.2(f) (1973).

The standard, again based upon the expression of individuality rationale, permits juveniles to wear jewelry. Some items, of course, may be sharp or pointed and may endanger the safety of the child, as well as that of other persons in the facility. Therefore, reasonable restrictions may be placed upon the possession of jewelry as well as clothing which could be used to inflict bodily harm to any of the children in the facility. Such restrictions should be posted in accordance with Standard 4.47. In allowing juveniles to bring their own clothing and jewelry to the facility, certain limits can be set by the facility staff in terms of quantity. The facility administrator must also explain to residents that there is a possibility of theft and that except when clothing or jewelry is in the safekeeping of the facility, any loss is the child's responsibility. The facility, however, has a responsiblity to provide each juvenile with a secure storage area and a central secure storage for items which the juvenile wishes to leave with the facility for safekeeping. Although exchanging of clothing among juveniles should not be prohibited, regulations governing such transactions should be prescribed and posted in accordance with Standard 4.47. These procedures should include formal approval by the staff to guard against coercive exchanges by more agressive juveniles. A list of descriptions of each juvenile's clothing should also be monitored. This is extremely useful in resolving disputes among residents over ownership and claims by residents that items of clothing are missing.

Case law in this area is not consistent and involves school placements rather than juvenile facilities. It therefore fails to provide any authoritative guidance. The Supreme Court has held that public school students could not be restricted from wearing armbands to protest the government's policy in Vietnam. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). The Court found that the wearing of armbands was "closely akin to 'pure speech'," and was entitled to the comprehensive protection of the First Amendment. *Id.* at 506. After noting that the problem did not relate to hair or dress regulations and did not concern disruptive action, the Court said that, in order to justify such regulations, the school must show that its action was caused by more than a desire to avoid the "discomfort and unpleasantness" that accompany an unpopular viewpoint. *Id.* at 509.

The Fifth Circuit Court of Appeals has ruled that regulations of dress are a part of the disciplinary process which are needed to maintain a balance between individual rights and the rights of the whole in the functioning of schools. *Griffin v. Tatum*, 425 F.2d 201 (5th Cir, 1970). In that case, the court said that school officials have the burden of showing that such regulations are required to alleviate disruptive influences to the educational process. *Id.* at 203. The Seventh Circuit, however, has indicated that to enforce dress regulations, school officials must demonstrate more than a hazy concept of school discipline. *Breen v. Kahl*, 419 F.2d 1034 (7th Cir. 1969), *cert. denied*, 398 U.S. 937 (1970). Since personal selection of clothing has no relation to the discipline function and is not significantly related to the proper functioning of the juvenile facility, and plays an important part in the rehabilitative process and in community reintegration, wide latitude should be given to children in the selection of their own and of issued clothing, subject only to health and safety regulations.

Whenever a restriction is placed upon the wearing of clothing or jewelry, a report should be sent to the ombudsmen to insure that it is not arbitrary or being used for the purposes of harassment. *See* Standard 4.82.

The National Advisory Committee recommends the elimination of dress restrictions in juvenile facilities as an action each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.123	Development of State Standards and Guidelines
1.5	Records Pertaining to Juveniles
4.11	Role of the State
4.21	Training Schools
4.219	High Security Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.43	Personal Appearance
4.47	Notice of Rules
4.82	Ombudsman Programs

4.43 Personal Appearance

Restrictions on the right of juveniles to determine the length and style of their hair should be prohibited, except in individual cases where such restrictions are necessary for reasons of physical health or safety.

Restrictions on the right of students to grow facial hair should be prohibited, except in individual cases where such restrictions are necessary for reasons of physical health or safety.

Students should be required to observe reasonable precautions where the length and style of their hair could possibly pose a physical health or safety problem unless prescribed precautions are taken.

Before facility staff can remove head or facial hair against the wishes of any juvenile, an automatic grievance hearing shall be conducted as provided in Standard 4.81.

Source:

New York Official Compilation of Codes, Rules and Regulations, §171.3 (1973).

Commentary

This standard prohibits regulations which unnecessarily restrict the rights of juveniles to determine the length and style of their hair and to grow facial hair. Like all standards in the 4.4 series, it applies to all residential facilities. Like Standard 4.42, this standard is premised upon the notion that pride in one's appearance will heighten a child's self-esteem while enhancing the facilities' rehabilitative and reunification goals. Hair length and style as well as facial hair are, like clothing, expressions of one's identity which should not be curtailed except for health and safety reasons. Consequently, the standard permits restrictions regarding head and facial hair only in individual cases when sound physical health or safety reasons exist. However, such restrictions may not be based on personal preferences of those in authority, Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Corrections Administration*, Standard 7.6(I) (draft, 1976). Restrictions may be warranted in cases in which children are involved in food preparation or service or work with machinery. In those and similar situations, regulations requiring the children to wear hairnets or hats would be legitimate and preferred to removal.

The children, of course, are responsible for maintaining their hair in a clean, hygenic state. In addition, the standard places upon the children the burden of observing reasonable precautions if their hair could possibily pose a physical health or safety problem. Reasonable actions taken by juveniles themselves, however, should serve to supersede, at least temporarily, the need for official action invoked pursuant to these regulations.

Although the involutary cutting of a juvenile's hair is no longer so volatile an issue that the decision to remove hair should routinely be made only by the director of the correctional system, automatic referral to the grievance mechanism described in Standard 4.81 should precede the involuntary removal of hair to insure that good reason exists and no improper motive is involved.

Case law in this area, as in Standard 4.42 is inconclusive. The Supreme Court has upheld regulations which restrict the style and length of hair, sideburns, and mustaches, and which prohibit beards and goatees worn by members of a county police force. *Kelly v. Johnson*, 425 U.S. 238 (1975). The Court found that state's police power empowered the county to organize its police force in a way it deemed "most efficient in enabling its police to carry out the duties assigned to them under state and local law," and that such a choice "necessarily gives weight to the overall need for discipline, espirit de corps, and uniformity." *Id.* at 246. However, the court stated that it was not addressing whether the general citizenry has a liberty interest within the Fourteenth Amendment in matters of personal appearance, and that the case should not be viewed as providing guidance in that area.

The cases involving personal grooming of juveniles arise in the context of school regulations. The Fifth Circuit Court of Appeals has upheld that the suspension of public school students for violations of a rule requiring them to shave, because the failure to shave was a departure from the norm which had a diverting influence on the student body. *Stevenson v. Board of Education*, 426 F.2d 1154 (5th Cir. 1970), *cert. denied*, 400 U.S. 957 (1970).

The Fifth Circuit again upheld regulations controlling hair length and grooming in the public schools, based upon undisputed evidence that the wearing of long hair by male students was a disruptive influence in the school. *Griffin v. Tatum*, 425 F.2d 201 (5th Cir. 1970). The court found that such regulations "are a part of the disciplinary process which is necessary in maintaining a balance as between the rights of individual students and the rights of the whole in the functioning of schools." *Id.* at 203. According to the court, school officials must demonstrate that the regulations are necessary to alleviate interference with the educational process. The court then found, however, that the particular interpretation and application of the rules in issue were arbitrary and unreasonable to the extent that they violated due process and equal protection. *Id.*

The Seventh Circuit Court of Appeals on the other hand has held that, absent a showing of justification, a school board cannot properly expel or threaten to expel male students for failure to comform to hair length regulations. *Breen v. Kahl,* 419 F.2d 1034 (7th Cir. 1969), *U.S. cert. denied,* 398 U.S. 937 (1970). Because there was no showing that hair length constituted a health problem, physical obstruction, danger to any person, or disruptive influence, the court refused to enforce the rules "for sake of some nebulous concept of school discipline." *Id.* at 1037.

The intensity of emotion which existed a decade ago surrounding hair length and facial hair has to a large extent disappeared. While grooming and hygiene remain a proper concern of administrators of facilities with diverse populations and may affect rehabilitative efforts, restrictions on hair length and facial hair are seldom necessary for the smooth functioning of a facility. To the extent that regulations are necessary for physical health or safety purposes, the standard is consistent with the law in permitting it. But where the regulations serve only punitive or denigrative purposes, they foster no rehabilitative or administrative purpose, are probably unlawful, and should be prohibited.

The National Advisory Committee recommends the elimination of restrictions on personal appearance as an act each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.123	Development of State Standards and Guidelines
1.5	Records Pertaining to Juveniles
4.11	Role of the State
4.21	Training Schools
4.219	High Security Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.43	Personal Appearance
4.47	Notice of Rules
4.81	Grievance Procedures

4.44 Visitation

A juvenile should have the right to receive any and all visitors at the times fixed for visits. However, a facility may deny access by a visitor if the visit would present a substantial danger to the health of the juvenile or the safety of the facility. Whenever a visitor is denied access, a written report should be prepared describing the dangers which the visit would pose and the basis for believing that the danger exists. The report should be kept on file, a copy should be given to the juvenile, and a copy should be sent to the ombudsman.

Source:

See generally New York Official Compilation of Codes, Rules and Regulations, §171.9 (1974); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.13 (1975).

Commentary

This standard sets forth the right of a child to receive visitors and the power of the facility to deny visitors access if their visits would pose a health threat to the individual child or a safety threat to the facility. Upon such denial, the facility must prepare a written report describing these dangers and the basis for believing they exist. The report should be kept on file and a copy given to the juvenile and to the ombudsman so that some independent review of the denial of visitation can be made. *See* Standard 4.82.

This standard recognizes, as does Standard 4.41, the paramount importance of observing the right of juveniles to maintain links with significant persons in the community. The facility should permit such contact to be conducted with a minimum of interference and with a reasonable degree of privacy. Visits with families and friends should be encouraged since they increase normalization while the child remains in a residential facility. Furthermore, they must be seen as an integral part of the rehabilitative and reunification process.

As the number of restrictions placed upon a child becomes greater in the facility, the more crucial it is that the right to liberal visitation be observed. The failure of a facility to allow and encourage full participation of family and interested friends in the rehabilitative program of a youthful offender is contrary to the process and has been held to be a violation of the juvenile's state and federal right to treatment. *Morales v. Turman,* 383 F. Supp. 53, (E.D. Tex. 1974), *rev'd on other grounds,* 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322 (1977), *remanded on rehearing,* 562 F.2d 993 (5th Cir. 1977).

While the standard does not expressly address the issue, administrators of a facility should be authorized to impose reasonable regulations establishing areas where visitation is to take place, length of visits, whether or not personal contact is permitted, schedule for vistation, prior consultation with staff in appropriate cases, and the number of visitors permitted at a given time. *See, e.g.,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration* (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*] (institution must allow a minimum of visits twice weekly). *Morales v. Turman,* 364 F. Supp. 53, (Interim Relief Plan) (interim relief provided for two-hour visits on two separate weekdays and for visits 9 a.m.-5 p.m. on Saturdays, Sundays, and holidays). Since this standard is applicable to all types of residential settings, no specific delineation of regulations is possible. However, when drafting regulations in this area, administrators must do so with a goal of maintaining a liberal visitation and maximum privacy within the context of safety and security.

To protect the security of the facility and the well-being of the children, especially in secure units, the facility must have the power to exclude some visitors. The standard would permit the exclusion of a visitor if there are legitimate, documentable dangers to either the juvenile or the facility. When visitation is denied, the reasons for denying access should be stated in writing and a copy should be given to the juvenile and to the ombudsman so that a review of the decision can be made. While searches of visitors should not normally occur, they may be conducted if the progam director has probable cause to believe that a visitor may possess contraband and he/she procures a search warrant, or if the visitor signs a written consent to a search. *See* IJA/ABA, *Corrections Administration, supra* at 7.6(d). However, since searches are not conducive to liberal visitation, they should not be performed routinely, nor should they be any more intrusive than necessary when they occur. *Id.* Any regulations concerning visitation established by the facility should be posted in accordance with Standard 4.47.

The National Advisory Committee recommends the adoption of a liberal visitation program as an action that each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.123	Development of State Standards and Guidelines
1.5	Records Pertaining to Juveniles
4.11	Role of the State

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4.21	Training Schools
4.219	High Security Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.41	Mail and Censorship
4.47	Notice of Rules
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.45 Religious Freedom

All facilities should afford the juveniles placed therein the right and the opportunity to participate in the religious observances of their choice.

Counseling to members of their faith by authorized representatives of religious denominations should be permissible at all facilities. However, the use of physical force, punishment, or coercion to compel attendance or participation in religious observances or rehabilitation programs predicated on religious beliefs should be prohibited.

Source:

New York Official Compilation of Codes, Rules and Regulations, §171.4 (1973).

Commentary

This standard recognizes the right of juveniles to participate in the religious observances of their choice, as well as their right not to participate at all while residing in a residential facility. The facility must make available religious counseling provided by authorized members of the various denominations. Like all other standards in the 4.4 series, this standard applies to all types of facilities.

The position adopted here is that juveniles in state custody have the same right to religious freedom as adults. "Freedom of conscience and freedom to adhere to such religious organizations or form of worship as the individual may choose cannot be restricted by law." *Cantwell v. Connecticut,* 301 U.S. 296, 303, 304 (1940). When a person enters a penal facility, he/she does not forfeit every civil right. *See, e.g., Jones v. N. C. Prisoners Labor Union,* 433 U.S. 119, 129 (1977). Traditionally the prisoner's right to freedom of religion has been regarded as a preferred First Amendment right and an integral part of the rehabilitative process. *See Pell v. Procunier,* 417 U.S. 817 (1972); *Brown v. Peyton,* 437 F. 2d 1228 (4th Cir. 1971); *Barnett v. Rodgers,* 410 F.2d 995 (D.C. Cir. 1969). While the freedom to believe is absolute, the freedom to act is not as broad. The conduct of religious activity remains subject to regulation for the protection of society. *Cantwell.*

Cases involving the religious rights of adult prison inmates have held that they must be permitted to practice their religion on a nondiscriminatory basis "so long as it does not present a clear and present danger to the orderly functioning of the institution." *Banks v. Havener,* 234 F. Supp. 27, 30 (E.D. Va. 1964). Rather than being an absolute right, the conduct of a religion is subject to rules and regulations necessary to the safety of the prisoners and the orderly functioning of the institution, *Banks,* 234 F. Supp. at 31. *Barnett,* just as the practice of religion outside a prison is subject to regulation for the protection of society. *Cantwell.* Certainly preaching and disseminating literature should not be prohibited. *Cantwell.* Nor should religious medals and symbols be prohibited in the absence of evidence of improper use. *Fulwood v. Clemmer,* 206 F. Supp. 370 (D.D.C. 1962). Additionally, religious brochures should not be kept from people in correctional facilities. *Id.* Further, no child should be forced to violate dietary restrictions of his/her religion. Rather, facilities should accommodate the religious dietary requirements of the child. *Accord,* American Corrections Association, *Standards for Juvenile Community Residential Services,* 8265 (1978). On the other hand, where the religious activity is such that the safety of a facility is threatened or the physical health of a juvenile is endangered, regulation is permissible. *Id.*

Since religious instruction is at least as important to children as to adults, their right to engage religious practices should be as free. Indeed, since the majority of children housed in residential facilities in accordance with these standards will have community contact and be able to participate in organized religious activity outside the facility, few health and safety problems should arise. More secure facilities, however, may need to regulate religious observance. Before restrictions are imposed, they should be reviewed by legal counsel to avoid infringement upon the First Amendment. Final decision-making authority should rest in the state agency rather than in the individual facility. Of course, all regulations should be posted in accordance with Standard 4.47.

It must be noted that the provisions of this standard are not limited to participation in traditionally recognized religions. Since religious beliefs are matters of mind which should not be controlled by the state, no preference for a specific denomination should be made by the facility. *Cf. Engle v. Vitale,* 370 U.S. 421 (1962); *School District of Abbington v. Schempp,* 374 U.S. 203 (1963). Hence, children should be permitted to participate in new and unorthodox religions as well as in traditional ones. Reasonable restrictions can be imposed, however, for safety and physical health purposes so long as they are imposed in a nonbiased manner. Thus, religion freedom remains intact while facility concerns remain recognized.

The standard also provides that the facility must permit the children access to counseling by authorized representatives of religious denominations. *See N.Y. Official Compilations of Codes, Rules and Regulations,* §171.4(b). *Accord,* American Correctional Association, *Standards for Juvenile Community*

Residential Services, 6168 (1978). In *Harris v. Bell,* 402 F. Supp. 469 (D.C. Mo. 1975) a Federal District Court entered a consent judgment specifying that juveniles confined to their cells for disciplinary purposes or segregated from the general population for any other lawful reason, are to be notified upon their incarceration, that they may see a minister or priest upon request. Clerics of all denominations are an important resource for the facility. They enhance the rehabilitation and the reintegration process by counseling juveniles and by establishing community contacts. When children seek this service on their own initiative, it should not be denied.

While the right of juveniles to practice their faith seems to be well-established, their right to abstain from religious activities is less clear. This standard, therefore, addresses the abstention issue by expressly prohibiting the use of physical force, punishment, or coercion to compel attendance or participation in religious observances. *Accord,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Corrections Administration,* 7.6(f) (draft 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*]; *N.Y. Official Compilations of Codes, Rules and Regulations,* §171.4(c). This standard does not prohibit the use of facilities sponsored by religious organizations so long as the juvenile is not compelled to partake in religious therapy or practices against his/her wishes. Implicit in this prescription is that no adverse consequences should result from decisions to abstain from religious pursuits. It is, therefore, of questionable validity to record juveniles' participation and nonparticipation in religious services as such information may subsequently be used to make decisions affecting other aspects of their lives. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 7.6 and Commentary.

The standard addresses the children's rights to change their faith, by similar proscriptions against compelled attendance. While permitting changes and abstinence may conflict with the parents' wishes, it is nonetheless desirable. The law on this point is not clear. The Supreme Court has recognized the right of parents to control the religious upbringing of their children. *Wisconsin v. Yoder,* 406 U.S. 205 (1971). Arguably then, a state facility acting *in loco parentis* should recognize the religious preference of the parents. In fact, some state statutes currently impose upon training schools the obligation of fostering the religious development of children. *See, e.g.,* 18 *N.Y.C.R.R.* 5.17(a), (c); *Ill. Ann. Stat. Courts* (37) §705-7(2); *Ill. Ann. Stat., Charities and Publ. Welf.* (23) §§2627, 2656.

On the other hand, some cases indicate that children have the right to make their own decisions independent of parental wishes, upon reaching the age of discretion, thus supporting the children's right to choose their own religion, if any. *Martin v. Martin,* 308 N.Y. 136, 123 N.E.2d 812 (1954) (Matrimonial action) (age 12); *In re Vardinakis,* 160 Misc. 13, 289 N.Y.S. 355 (Dom. Rel. Ct., N.Y.Co. 1936) (ages 13 and 15) (neglect cases); *cf. Yoder, supra* (Justice Douglas dissenting). Additionally, a requirement that a state-operated residential facility foster religious development may violate the Establishment Clause of the First Amendment. *See Engle* and Abbington School District disallowing prayer in the public schools.

By affirming the right of juveniles to participate in the religion of their choice and by prohibiting the use of coercion to compel participation, the standard endorses the concept that religious decisions are personal to the children. While the institution should not ignore the view of the parents, it cannot enforce their beliefs without possibly violating the prohibitions imposed by the Establishment Clause. As a practical administrative matter the best that the state could accomplish would be to compel attendance which would be counterproductive to rehabilitation.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.123	Development of State Standards and Guidelines
1.5	Records Pertaining to Juveniles
4.11	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facility
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facility
4.47	Notice of Rules

4.46 Responsibility for Control and Apprehension of Juveniles

The control of juveniles placed in a residential facility should be solely a staff responsibility. Under no circumstances should residents of the facility be used to control other juveniles.

The return to a facility of juveniles who leave without authorization should be the responsibility of staff and law enforcement agencies. However, the staff should be authorized to allow residents of the facility to assist in carrying out this responsibility if:

- **a. The presence of the resident would aid in inducing the juvenile to return voluntarily;**
- **b. The resident is accompanied by a staff member at all times; and**
- **c. The use of physical force by the resident to secure the absent juvenile's return is prohibited.**

Source:

New York Official Compilation of Codes, Rules and Regulations, §171.10 (1974).

Commentary

This standard recommends that the staff should have the sole responsibility for controlling children in a residential facility and that residents should not be used to control other children.

Supervising and controlling juveniles within a facility is the responsibility of the staff of the facility. Staff members should participate in an orientation and training program prior to being assigned to specific tasks within the facility, *see* Standard 1.425. In addition to receiving training in rehabilitation and counseling services, staff members should become familiar with basic security procedures, group control techniques, crisis intervention, and emergency and major disturbance plans. Further, staff should participate in refresher courses and in ongoing training to remain abreast of current practices. *Id.;* and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.3 (1976).

There is always a temptation, especially when a facility is under-staffed, to select specific juveniles to undertake the responsibility of supervising other juveniles. In the past, some facility staff members have permitted, as part of group counseling or for administrative convenience, a group of children to monitor a living unit and to impose sanctions upon a resident for infractions of the rules. While such practice may appear to reduce friction at a facility, there exists the danger of control passing to more aggressive, physically intimidating residents. In addition to lacking the proper training afforded the staff, the residents may lack the maturity and perspective necessary to exercise appropriate controls. The resulting potential for coercion, intimidation, and abuse makes this method of control unacceptable.

The standard, however, is not intended to prevent children from assuming peer leadership roles in work settings, during athletic exercises, or on field trips. *Accord,* American Correctional Association, *Manual of Standards For Juvenile Community-Based Areas,* Recommendation 6169 (1978). When permitted, such peer leadership should be exercised in the presence of a staff member who can supervise and guard against an excess of control.

Residents should also not be permitted to apprehend juveniles who have left the facility without authorization. This task, like that of control and discipline, is the responsibility of the staff and additionally, of law enforcement officials. See Standards 2.21, 2.23, and 2.251. When children are given the task of apprehension, they may be difficult to control and may overreact causing injury. This is especially true if the absconder is perceived as giving the residence a bad name or causing tighter security measures to be enforced against all residents.

Under certain circumstances, however, the staff should be authorized to allow facility residents to assist in this task. Where the staff is of the opinion that a juvenile can better communicate with an absconder who has been located, he/she may be permitted to do so. The resident must, however, be accompanied by a staff member at all times to avoid the danger of a hostile confrontation between the two juveniles. In addition, the resident should not be permitted to use physical force to secure the return of the absent juvenile. *Cf.* Standards 4.61 and 4.62.

The National Advisory Committee recommends the adoption of this standard as an action each state can take *immediately, without a major reallocation of funds, to improve the administration of juvenile justice.*

Related Standards

1.123 Development of State Standards and Guidelines
1.425 Personnel Providing Direct Services to Juveniles
1.5 Records Pertaining to Juveniles
2.21 Authority to Intervene
2.23 Decision to Take a Juvenile into Custody
2.251 Police-Juvenile Units
4.11 Role of the State
4.21 Training Schools
4.219 High Security Units
4.22 Camps and Ranches
4.23 Group Homes
4.24 Community Correctional Facilities
4.25 Foster Homes
4.26 Detention Facilities
4.27 Shelter Care Facilities
4.54 Disciplinary Procedures
4.61 Mechanical Restraints
4.62 Medical Restraints
4.71 Transfers from Less Secure to More Secure Facilities

4.47 Notice of Rules

The rules and regulations to be enforced against or on behalf of a juvenile placed in a residential facility should be posted in each living area of that facility.

Sources:

See generally National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.3 (1976); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 7.6(m) (draft, 1976).

Commentary

This standard requires the staff of the facility to post in the living area of all residential facilities the rules and regulations to be enforced against or on behalf of children residing there. The purpose of posting regulations is to ensure that the children have notice of their rights and obligations so that they can conform their conduct accordingly. Additionally, posting of the rules will serve as a check on staff abuses. Children will know the limits of the staff authority, when a staff member has breached his/her duty and when a referral to the grievance procedure is appropriate. *See* Standard 4.81.

The notice of the rules should be written so that they are readily comprehensible to the residents. Where necessary, they should be written in a bilingual fashion. Since many children will have limited reading ability when they enter the facility, posting alone may not be sufficient to apprise them of the rules. Consequently, the rules should be read and explained to each juvenile upon arrival at the facility. Additional measure should be taken to explain the rules to hearing impaired children.

Several court decisions have emphasized the importance of providing the children with notice of the rules which govern them. In *Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind. 1973), *aff'd.,* 491 F.2d 352 (7th Cir. 1974), *cert. denied,* 417 U.S. 976 (1974), the court held that at a minimum children must be made aware of the institutional rules, sanctions, and the administrative procedures governing their potential confinement in solitary detention. *Cf. Inmates v. Affleck,* 346 F. Supp. 1354 (D.R.I. 1972); *Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds,* 535 F.2d 864 (5th Cir. 1976), rev'd and remanded, 430 U.S. 322, *remanded on rehearing,* 562 F.2d 993 (5th Cir. 1977). Regardless of the constitutional and statutory rights that may be involved, the promulgation and posting of rules is sound administrative practice. The rules permit the facility to function smoothly and provide the residents with an experience in group living that is a microcosm of society. To that end, they further the rehabilitation and reintegration process.

Since children are placed in facilities for care and rehabilitation rather than punishment, the rules should not be unnecessarily restrictive. Regulations should bear a rational relationship to the established treatment programs and should not serve only to facilitate regimentation, order, or ease of administration within the facility. *See* National Juvenile Law Center, *Law and Tactics in Juvenile Cases,* 26.4 (1977). As the degree of security necessary for the residential facility decreases the rigidity of the rules should also decrease. In community facilities, the rules should resemble those normally imposed by parents on their own children.

Generally, rules and regulations should be made applicable to all state juvenile facilities so that the entire system will be premised upon the same basic regulations and philosophy. The rights described in series 4.4, 4.5, 4.6, 4.7 and 4.8 of the standards are of this variety. However, the facility superintendent, if the need arises, should issue written policies pertaining to characteristics peculiar to that facility to supplement systemwide regulations. These supplemental regulations should be approved by the state agency prior to posting to insure that they do not conflict with the systemwide regulations, policies, or philosophy of the state agency. In addition, there should be a periodic review, at least annually, of local and systemwide regulations by each facility and by the state agency. The review should determine: (1) whether the situation giving rise to a given regulation has changed, thus making the regulation unnecessary; (2) whether a state statute or judicial action has made the regulation totally or in part unlawful; (3) whether the policy or philosophy of the oversight agency has changed, thereby necessitating modification of a regulation; and (4) whether the staff of the facility or the juvenile residents recommend modifications of any regulation. The review will insure that regulations which become unlawful, unnecessary or otherwise inconsistent with state policy or philosophy are removed and not enforced by staff members unaware of the change.

The National Advisory Committee recommends that the posting of regulations pertaining to facilities as an action that each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.124	Evaluation of State and Local Efforts
4.11	Role of the State

4.21 Training Schools
4.219 High Security Units
4.223 Services
4.23 Group Homes
4.24 Community Correction Facilities
4.25 Foster Homes
4.26 Detention Facilities
4.27 Shelter Care Facilities
4.4 Rights of Juveniles
4.5 Discipline
4.7 Transfer Procedures
4.8 Grievance Procedures and Ombudsman Programs

4.48 Searches

Indiscriminant searches should be prohibited. Whenever there is reason to believe that the security of a facility is endangered or that contraband or objects which are illegal to possess are present in the facility, a search of a room, locker, or possessions of a juvenile may be conducted.

Whenever possible, a juvenile's physical presence should be assured prior to a search. When it is impossible to obtain the juvenile's physical presence the juvenile should be given prompt wirtten notice of the search and of any article taken. Written reports of all searches should be given to the ombudsman.

Source:

N. Y. Official Compilation of Codes, Rules and Regulations, §171.8 (1974); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 7.6(k) (draft, 1976) [hereinafter cited as IJA/ABA, *Correctional Administration*].

Commentary

Courts have been reluctant to extend the Fourth Amendment right to be free from unreasonble searches and seizures to correctional facilities. In the adult penal system, prison officials have been accorded broad powers regarding searches of inmates and their belongings. *Bell v. Wolfish, 441,* U.S. 520 (1979). Search warrants have not been required and restrictions placed upon searches have been few, e.g. *Denson v. United States,* 424 F.2d 329 (10th Cir.) *cert. denied,* 400 U.S. 848 (1970); *cf. Bell.*

While juvenile facilities, especially those contemplated by these standards, are not like adult prisons, and while the goal of the juvenile facility is rehabilitative rather than punitive, security problems are still of sufficient concern to require a balancing of a child's innate right to privacy against the powers of administrators of facilities caring for children. Achieving a proper balance is no easy task. In school settings, where security needs are generally low, many courts have accorded school administrators the power to conduct searches of students and their lockers. These searches have generally been upheld under a standard less than probable cause. Some cases have held that the Fourth Amendment is not implicated at all since school administrators are not governmental officials. *See, e.g., People v. Overton,* 24 N.Y.2d 522, 249 N.E.2d 366, 301 N.Y.S.2d 479 (1969); *In re Fred C.,* 26 Cal. App.3d 320 75 Cal. Rptr. 220 (Cal. App. 1969). *See also* cases collected in National Juvenile Law Center, *Law and Tactics in Juvenile Cases,* 6, 7. (1977). Those courts acknowledging the existence of a Fourth Amendment right, have also permitted reasonable intrusions when they are related to accomplishing legitimate educational objectives. *See, e.g., Smyth v. Lubbers,* 398 F. Supp 77 (W.D. Mich. 1975); *Piaggola v. Watkins,* 442 F.2d 284 (5th Cir. 1971). Moreover, there can be little doubt that the expectation of privacy of persons residing in facilities for adjudicated juvenile delinquents is lower than that of students in the community and that security and discipline needs of the facility are greater.

Since this standard applies to all facilities and to all children, adjudicated and nonadjudicated, delinquent and neglected, current guidelines established for searches of adults in prison, adults in community, and children in school are not completely analogous. The standard endorses the position that indiscriminate searches are to be prohibited. However, administrators should have the power to conduct searches in facilities for appropriate purposes. Although such searches should not be routinely conducted, situations may arise where there are reasonable grounds to believe that a search may uncover stolen property, weapons, narcotics, or other contraband. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 7.6(k). However, since the standard is based on a recognition of security needs, the lower the level of security in the facility, the lesser the need for administrative searches. *Id.* at Commentary.

Within the facility, it is important that the juvenile be present during searches of his/her room, locker, or possessions. The juvenile's presence provides credibility for any claim concerning what was discovered and mitigates against loss or destruction of property. *Id.* If the juvenile cannot be present during the search, he/she should be promptly given written notice of the search and of any article confiscated. A record should be kept of all items seized. This provision is intended to avoid misunderstandings which may arise when a child discovers that property is missing. If the child's absence is only temporary and no emergency exists, administrators conducting the search should await his/her return. Property which the staff seizes should become the responsibility of the facility, which should be liable to the rightful owner for return or reimbursement. Of course, property which is contraband or that which is illegal to possess need not be returned.

Written reports of any search should be given to the ombudsman to insure that they are not being conducted for improper motives or without just cause.

The National Advisory Committee recommends the elimination of searches without reasonable grounds as an action each state can take immediately, without a major *reallocation of resources, to improve the administration of juvenile justice.*

The National Advisory Committee recommends that the establishment of regulations pertaining to searches as an action that each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.123	Development of State Standards and Guidelines
1.5	Records Pertaining to Juveniles
4.11	Role of the State
4.21	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.47	Notice of Rules
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.49 Work Assignments

Juveniles may be required to perform work functions as part of their rehabilitative program. However, juveniles should not be required to do work:

- **a. Which is unreasonably arduous or demeaning;**
- **b. Which is not an integral part of the rehabilitation program;**
- **c. Which cannot be shown to be a benefit to the juveniles; or**
- **d. Which has as its primary purpose monetary benefit to the facility or agency.**

Juveniles subject to compulsory education laws should be required to work no more than four hours per day. Juveniles not subject to or exempted from such laws should not be required to work more than eight hours per day.

Juveniles should receive compensation for work which confers a substantial benefit upon the facility or oversight agency. However, such compensation may be less than that provided in the minimum-wage provisions of the Fair Labor Standards Act.

Source:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 4.14 (draft, 1976).

Commentary

The primary purpose of this standard is to create for juveniles a right not to participate in involuntary work assignments which are not a part of their rehabilitative program, e.g., work which is unreasonably arduous or demeaning, which is not of benefit to the juveniles, or which has as its primary purpose monetary benefit to the facility or agency.

The term "rehabilitative program" alludes to the goal of developing proper work habits and/or useful, marketable skills in children. Such programs demonstrate the necessity of reporting to work promptly, of accepting orders from others, and of assuming responsibility. Rather than attempting to comprehesively "define rehabilitative program," the standard delineates work situations which are not permitted within the scope of such a program.

Because children under correctional supervision are not convicted criminals, special consideration must be given to the Thirteenth Amendment prohibition of involuntary servitude except where it is required as part of a punishment for a crime. Some early cases suggested that mentally incompetent persons who had not been convicted of a crime were protected by the Thirteenth Amendment and could not be compelled to work involuntarily, despite the therapeutic nature of the work. *Tyler v. Harris,* 226 F. Supp. 852 (W.D. Mo. 1964); *Johnston v. Ciccione,* 260 F. Supp. 553 (W.D.Mo. 1966). That absolute protection has subsequently been enroded. See *Jobson V. Henne,* 355 F.2d 129 (2d Cir. 1966); *Weisenfeller v. Kidulis,* 380 F. Supp. 445 (E.D. Wisc. 1974). Whether compulsory work for institutionalized juveniles violates the Thirteenth Amendment is as yet an unreasolved legal issue. *See* Haller, "Legal Challenges to Peonage in Institutions," 9 *Clearing House Rev.* 453 (1975); *King v. Corey,* 405 F. Supp. 41 (N.D.N.Y. 1975). In the absence of a resolution of this issue, the standard adopts a position which is tailored to the special needs of children in the juvenile system. It recognizes the general Thirteenth Amendment prohibition against involuntary servitude, the "theraputic" aspect of work programs and the general benefit derived by young people when they are permitted to assume responsibility for certain tasks and receive remuneration for the performance of tasks which confer benefit upon others.

Section (a) prohibits the institution from requiring juveniles to perform work "which is unreasonably arduous or demeaning." The necessity of limiting the institution's right to compel such involuntary servitude is well documented and described in various case studies. *See* National Juvenile Law Center, *Law and Tactics in Juvenile Cases,* Section 26.14 (1977). In *Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds,* 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322 (1977) *remanded on rehearing,* 562 F. 2d 993 (5th Cir 1977), a leading case on the issue of right to treatment, the court held that to require inmates to perform repetitive, nonfunctional, degrading, and unnecessary tasks for many hours, the so-called make-work, constitutes cruel and unusual punishment in violation of the Eighth Amendment. *See also* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 24.14 (1976) [hereinafter cited as *Report of the Task Force*]. Because arduous and demeaning work has no place in a program designed to enhance a youngster's self-image and to direct his/her life in a meaningful and productive direction, such tasks should be forbidden.

Sections (b) and (c) emphasize the basic nature and purpose of the residential program, which is to rehabilitate and benefit the children. Therefore, work may not be assigned to children unless it serves to achieve those goals. Forms of activity which are reasonably related to the juvenile's housekeeping or personal hygenic needs are permitted by this standard.

Accord, Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 414 (1977); *Report of the Task Force, supra* at Standard 24.14.

Multiple problems exist, however, in distinguishing between labor which relates to the needs of the juveniles and that which benefits only the facility. One method of determining whether work assignments have rehabilitative value is to discover if a given type of labor is required of patients in private facilities. If the task is not generally performed in private facilities it should be presumed that it is to be cost-saving labor rather than therapeutic. Ennis, "Civil Liberties and Mental Illness," 7 *Crim. L. Bull.* 101, 123 (1971). The standard does not attempt to distinguish between the myriad of tasks which may be involved. Administrators must do so, but only in the context of the standard's guidelines.

Section (d) expressly prohibits requiring work which has as its primary purpose monetary benefit to the facility or agency. It is, however, often difficult to determine whether a given activity serves only the facility and is devoid of any learning or rehabilitative value. For that reason, the IJA/ABA standards have advocated the implementation of an approved vocationally-oriented program with a grievance mechanism available for resolution of disputes in close cases. IJA/ABA, *Corrections Administration, supra* at Standard 4.14. *See also* Standards 4.81 and 4.82. When it is determined that the primary purpose of the task is to benefit the facility, it must cease or monetary benefit must be conferred upon the child.

Paragraph two of the standard sets forth the length of a working day for juveniles and distinguishes between children subject to compulsory education laws and those exempted from such laws. This assures that the academic training of qualified juveniles will not be curtailed by an over-emphasis of their work program.

The final provision of the standard allows juveniles to recieve compensation for work which confers a substantial benefit upon the facility or oversight agency. Such compensation may be less than provided for in the minimum wage provisions of the Fair Labor Standards Act. Thus the children are permitted the opportunity to perform nonrequired work and to enjoy the psychological and material benefits of earning compensation for their performances. *See* IJA/ABA, *Corrections Administration, supra* at Standard 4.14 and Commentary.

Yet, because juveniles are committed for indeterminate periods, work outside the scope of a program may be performed involuntarily because of the omnipresent threat of extended commitment. The Second Circuit Court of Appeals had indicated that if nontherapeutic work performed by mental patients is admittedly involuntary, compensation for the work will not necessarily satisfy the Thirteenth Amendment because, "the mere payment of compensation, unless the receipt of the compensation induces consent to the performance of the work, cannot justify the forced labor." *Jobson,* 355 F. 2d at 132 at n.3. The standard endorses this concept.

While work programs have often been viewed as a set off claim for care, custody, or services provided by the facility, such policy should not be instituted. The rationale behind forbidding set offs lies in the belief that the depletion of the juveniles' earnings would deprive them of the opportunity to learn the value of saving, of making financial decisions, and of having some financial resources upon release. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 4.14 and Commentary. The IJA/ABA Joint Commission further provides for workmen's compensation coverage for juveniles injured while performing work conforming to the standard.

Both Standard 4.49 and IJA/ABA Standard 4.14 dispense with strict adherence to minimum wage statutes and indicate that compensation should be reasonable and based upon the level of work performance, as gauged by the level of performance required in the labor market. The explanation behind this relaxation of the Fair Labor Standard Act and similar statutes is three-fold: juveniles are not held to the level of performance of the real world; the goal of work programs is assistance and training to the juveniles, not profit; if minimum wages were required, fewer jobs would remain available to the juveniles and moneys allocated to such programs would be drained.

The requirement of compensation should not be applied so as to prevent juveniles from voluntarily performing civic or charitable work without compensation. Benefit can be derived from such work which transcends compensation, however, procedures should be developed to ensure that such work is truely voluntary and free from subtle forms of coercion.

While the standard does not specify a depository for these wages, IJA/ABA, *Corrections Administration, supra* at Standard 4.14 provides for the establishment of a trust fund with attendant rules. *See also* Standard 4.41 and Commentary. *But cf., Report of the Task Force, supra* at Standard 24.14 (permits court order allowing payments to support juveniles' families or for restitution to victims of the instant offenses). Because of the possibility of theft, some system of deposit and withdrawal should be established by the facility. Of course, the less restrictive the facility, the less the need for such forms of security.

The National Advisory Committee recommends the adoption of the standard as an action each state can take immediately, without a major reallocation of resources, to improve the administration of juvenile justice.

Related Standards

1.123	Development of State Standards and Guidelines
1.5	Records Pertaining to Juveniles
4.11	Role of the State
4.21	Training Schools
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4.410 Right to Care and Treatment

Juveniles in residential facilities should have the right to a basic level of services, including but not limited to: an adequate and varied diet; varied recreation and leisure-time activities; preventive and immediate medical/dental care; remedial, special, vocational, and academic educational services; protection against physical and mental abuse; freedom to develop individuality; opportunity to participate or not participate in religious observances; clean, safe, adequately heated and lighted accommodations; and maximum feasible contact with family, friends, and community.

Juveniles in residential facilities have a right to a maximum level of treatment services, in accordance with their needs, including individual and group counseling, psychiatric and psychological services, and casework services. In addition, juveniles should not be subjected to treatment methods such as psychosurgery, electric stimulation of the brain, behavior modification involving excessive deprivation of personal liberties, or any other treatment which is cruel, demeaning, or dangerous.

While services are ordinarily most effective when participation is voluntary, juveniles should have an obligation to be physically available for services ordered by the family court during the dispositional period.

Physical force and other forms of punishment described in Standard 4.51 should never be used to compel participation. However, failure to be physically available for services may be considered in determining whether to recommend a change in disposition, although it should not be used as a basis for extending the dispositional period, except as specified in Standards 3.1810 and 3.1811.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standards 4.9 and 4.10(f)-(h) (draft, 1976); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 14.20, 14.7, 24.5, 24.10-24.12, and 24.15-24.16 (1976); *See generally Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974) *rev'd on other grounds,* 535 F. 2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F. 2d. 993 (5th Cir. 1977); *Martarella v. Kelley,* 349 F. Supp. 575 (S.D.N.Y. 1972) *enforced,* 359 F. Supp. 478 (S.D.N.Y. 1973); M. Goddard, *The Effect of Right to Treatment Litigation upon the Relationship of Juvenile Offenders, Institutions and the Family Court,* 21-35 (1976).

Commentary

This standard recommends that juveniles residing in residential facilities should receive a basic level of services which includes diet, *see* Standard 4.2173; recreation, *see* Standard 4.218; medical and dental care, *see* Standards 4.217-4.2174; various educational services, *see* Standards 4.216-4.2163; protection against physical and mental abuse, *see* 4.41-4.49, 4.51-4.54, 4.61, and 4.62; freedom to develop individuality, *see* 4.41-4.49; religious freedom, *see* 4.45; safety, heat, and light; a maximum possible contact with family, friends, and community, *see* Standard 4.44; *see generally* Standard Relating to Various Residential Facilities.

This standard also recognizes that juveniles in residential facilities should have a right to maximum level of treatment services, such as individual and group counseling, and psychiatric, psychological, and casework services. Juveniles should also have the right not to be subjected to treatment such as psychosurgery, *see* Standards 4.62, and 4.217-4.2174; electric stimulation of the brain, *id.*; unnecessary drug treatment, *id.*; behavior modification which involves excessive deprivation of personal liberties, or other cruel demeaning or dangerous treatment. In making these recommendations, the standard prescribes in general terms a right to treatment which is more specifically described throughout the *Supervision Function.*

The standard places upon juveniles the obligation to be physically available for court-ordered services during the dispositional period, but emphasizes the participation in most services should be voluntary. Therefore, physical force or punishment should never be used to compel participation. If the juvenile does not see the benefit of the program, compelled participation may increase hostility to all other parts of the program. Failure to be physically available for services, however, may be considered in determining whether to reduce the dispositonal period or to transfer a juvenile to a less secure program. However it should not be used as a basis for extending the dispositional period except in accordance with Standards 3.1810 and 3.1811.

The phrase "right to treatment" is frequently used in a comprehensive sense to include both the right to treatment and the right to care. As described by Malcolm Goddard, the right to treatment consists of these two components:

> "Right to treatment cases are generally separated into two types: first, there are cases involving right to treatment, in accordance with basic concepts of human decency, which parallel in many ways the Geneva Convention relative to the treatment of prisoners of war. To wit, the issues here involve humane treatment, adverse distinctions based on race or creed, right to minimum standards of medical care, prohibition against close confinement, right to compensation for work performed, prohibitions against corporal and collective punishment, etc.
>
> Secondly, there are cases involving right to treatment in a quasi-medical context. Here the litigation involves allegations that the various components of the rehabilitative program, including psychiatric and psychological services, group and individual counseling, child-care services, educational services, etc., are quantitatively or qualitatively inadequate to reasonably effectuate rehabilitation."

Goddard, *supra* at 21-35.

The rationale supporting the right to treatment and, in fact, underlying the juvenile justice system, is the concept of *parens patriae* with the state acting *in loco parentis* to provide juveniles with the care they would ordinarily be expected to receive from their parents. As numerous cases and commentators have pointed out, institutions have often failed to provide those confined with the requisite care and treatment commensurate with their needs. Law Enforcement Assistance Administration, *Comparative Analysis of Standards and State Practices: Juvenile Dispositions and Corrections,* Vol. IX, Issue 4 (1977).

The issues of surrounding the right to treatment have not been conclusively resolved by the courts. Not withstanding this lack of resolution by the courts, the National Advisory Committee chose to make the right to treatment the foundation of its recommendations regarding the juvenile justice system.

The following material describes the rulings of various courts and provides the basis for the committee's decision.

State and federal courts have recognized state statutes and constitutional concepts regarding due process, equal protection, and cruel and unusual punishment as the legal source of the right to treatment. The right was first considered in cases involving confinement for mental health purposes. *See Miller v. Overholser,* 206 F.2d 415 (D.C. Cir. 1953); *Commonwealth v. Page,* 339 Mass. 313, 159 N.E.2d 82 (1959); *Sas v. Maryland,* 334 F.2d 506 (4th Cir. 1964); *Director of Patuxent v. Daniels,* 243 Md. 16, 221 A.2d 397 (1966).

In *Rouse v. Cameron,* 373 F.2d 451 (D.C. Cir. 1966), the court, basing its ruling on statutory grounds, held that a person involuntarily committed to a mental hospital has a right to treatment. The court also suggested that the right to treatment may be protected by the due process, equal protection, and cruel and unusual punishment clauses of the United States Constitution. The constitutional right to treatment for mental patients hinted at in *Rouse* was confirmed in *Wyatt v. Stickney,* 325 F. Supp. 781 (M.D. Ala. 1971), *aff'd* 334 F. Supp. 1341 and 344 F. Supp. 373 (M.D. Ala. 1972), subsequently *aff'd sub. nom., Wyatt v. Aderholt,* 503 F.2d 1305 (5th Cir. 1974). In that case, the court held that due process of law required that patients who are involuntarily committed for purposes of treatment in noncriminal proceedings without the constitutional protections required in criminal proceedings are entitled to treatment since that was the purpose for which they were confined. *Id.* at 784-85. *See also Welsh v. Likins,* 373 F. Supp. 487 (D. Minn. 1974), *aff'd in part and vacated and remanded in part,* 550 F.2d 1122 (8th Cir. 1977) (due process right to the least restrictive alternative in a mental health case upheld); *O'Connor v. Donaldson,* 493 F.2d 507 (5th Cir. 1974), *vacated,* 422 U.S. 563 (1975) (Supreme Court expressly left unresolved the issue of right to treatment in cases of compulsory confinement of mentally ill persons dangerous to themselves).

Courts have similarly recognized that the right to treatment extends to juveniles committed for the purposes of care and rehabilitation. Based upon language of the D.C. Code, the Court of Appeals for the D.C. Circuit has held that juveniles have a legal right to custody, "not inconsistent with the *parens patriae* premise of the law," *Creek v. Stone,* 379 F.2d 106, 111 (D.C. Cir. 1967). *See also In re Elmore,* 382 F.2d 125 (D.C. Cir. 1967) (juvenile's allegations that he was not receiving psychiatric treatment warranted an inquiry into how to best meet the child's needs).

Two leading cases involving juveniles have recognized the right to treatment on statutory as well as constitutional grounds. In one case, the court found that the "custody, care, and discipline" language of the Indiana Code, Ind. Code Ann. §31-5-7-1 (Burns 1973) provided the right to minimum acceptable standards of care and treatment for juveniles and the right to individualized care and treatment. *Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind. 1973), *aff'd* 491 F.2d 352 (7th Cir.) *cert.den.,* 417 U.S. 976 (1974). Looking beyond the statute, the court also found that the right to treatment was guaranteed by the United States Constitution. *Id.* at 360 n.12.

The second case likewise recognized the right to treatment on statutory and constitutional grounds and required the Texas Youth Council to initiate a professional treatment plan for children confined in institutions. *Morales v. Turman,* 383 F. Supp. 100 (E.D. Tex. 1974) *rev'd on other grounds,* 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F.2d 993 (5th Cir. 1977). Subsequently, the Circuit Court reopened the record and found that changes in the Texas Youth Council program would alter the scope of injunctive relief. While reviewing the services that the state had chosen to provide since the lower court rendered its decision, the court questioned the constitutional basis of the right to treatment. *Morales v. Turman,* 562 F.2d 993 (5th Cir. 1977).

Yet another court has concluded that concepts relating to procedural due process guarantee juveniles the right to treatment. *Inmates of Boys' Training School v. Affleck,* 346 F. Supp. 1354 (D.R.I. 1972). According to the court, the procedural safeguards which are afforded criminal defendants are lacking in juvenile delinquency adjudications because the juvenile justice system is rehabilitative rather than punitive. Therefore, the right to treatment for children is the *quid pro quo* for the absence of complete procedural due process. *Id.* at 1364. The court also based the right to treatment on Eighth Amendment grounds, holding that confining children without treatment constituted cruel and unusual punishment. *Id.* at

1366-67. Additionally, the court found that the confinement of children in an inhumane environment was a denial of equal protection, since the state would act to remove a child from such a setting if it were provided by his/her parents. *Id.* at 1367; *see also State ex rel. Harris v. Erickson,* No. 411-698 (Milwaukee County Cir. Ct. Dec. 21, 1973), *aff'd sub. nom. State ex rel. Harris v. Larson,* 64 Wis.2d 521, 219 N.W.2d 335 (1974) (due process required that adjudicated delinquent, dependent, and neglected juveniles awaiting placement be confined in a shelter care facility where treatment was provided, rather than in a detention center).

In *Martarella v. Kelley,* 349 F. Supp. 575 (S.D.N.Y. 1972), *enforced in* 359 F.Supp. 478 (S.D.N.Y. 1973), the court found that juveniles classified as persons in need of supervision (PINS) were denied due process when confined without treatment along with other juveniles classified as delinquent. To deny liberty on the basis of therapy which was then not provided was a due process violation, according to the court. It also found that the confinement of children in a maximum security institution was cruel and unusual punishment. *Id.* at 586-590, 600. While the majority of cases involved juveniles committed as delinquent or status offenders, the right to care and treatment found in the Constitution has also been applied in neglect cases as well. *See, e.g. Janet D. v. Carros,* 362 A.2d 1060 (Pa. Super. 1976); *State ex rel Harris.*

In sum, several theories have generally been proposed as support for the right to treatment. The first is statutory; the second is that some aspects of the right emanate from the Eighth Amendment's prohibition on cruel and unusual punishment. The third and fourth spring from due process considerations. The third requires that treatment be provided to prevent the exercise of *parens patriae* power from merely being a pretext for arbitrary government action which curtails freedom. The fourth requires that treatment be provided as a *quid pro quo* for reduced procedural protections when liberty is restrained for noncriminal rehabilitative purposes.

Of late, two courts have questioned the validity of a constitutional right to treatment. On remand from the Supreme Court, the Fifth Circuit Court of Appeals in *Morales* considered a right to treatment emanating from the due process clause doubtful, *Morales,* 562 F.2d at 998. The judge did, however, recognize the implications of the Eighth Amendment. *Id.* at 998, 999.

The Supreme Court left the broad question regarding the right to treatment unanswered in *O'Connor v. Donaldson,* 422 U.S. 563 (1975), when the Justices prohibited the commitment of nondangerous persons who were not receiving treatment. While concurring with the judgment, Justice Burger noted that there was no historical basis for the doctrine, that the states had always provided care for incompetent people and that not all confined people could be treated, *id.* at 584. He also pointed out potential abuses of the *quid pro quo* concept, *id.* at 586, 587.

Despite the fact that the underpinnings of the doctrine may not fit precisely into traditional constitutional constraints, the results of the concept of a right to treatment is a plan which recognizes "basic concepts of human decency". Goddard, *supra.* It is with this result in mind, rather than the niceties of legal contracts, that the standard recommends that the right to treatment be the underlying rationale of the entire juvenile justice system.

Embodied within the right to treatment is the concept of least restrictive alternative. Whenever any treatment is necessary, it should occur in the least intrusive manner possible. It is well settled that "governmental purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton v. Tucker,* 364 U.S. 479 (1960).

One of the most basic and fundamental rights is to be free from unwarranted restraints. *Lessard v. Schmidt,* 349 F. Supp. 1078, 1096 (E.D. Wis. 1972), *vacated and remanded on other grounds,* 414 U.S. 473, *on remand,* 379 F. Supp. 1376 (E.D. Wis. 1974), *vacated and remanded,* 421 U.S. 957 (1975), *on remand,* 413 F. Supp. 1318 (E.D. Wis. 1976) (reinstating 379 F. Supp. 1376); *cf., O'Connor; Parham v. J.R.,* 442 U.S. 584 (1979). In this light, the person or agency recommending full-time involuntary treatment must bear the burden of proving: (1) what alternatives are available; (2) what alternatives were investigated; and (3) why the investigated alternatives were rejected. *Id.* at 1096.

Even if the state shows legitimate reasons for restricting the liberty of a juvenile, as where he/she is dangerous to others, it must further show that the actions taken are the least restrictive means available for achieving the legitimate end in mind. *Inmates,* 346 F. Supp. at 1369; *see also Welsh,* 373 F. Supp. at 502; *Lynch v. Baxley,* 386 F. Supp. 378 (1974) (M.D. Ala. 1974).

Paragraph one of this standard addresses the first facet of the right to treatment, the right to care. This right assures that residential facilities meet the basic human needs of their children and provide them with an environment which will enhance their normal maturation process. To facilitate this process, a facility should provide as normal an environment as possible and be as close to a homelike setting as possible. *Accord,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 4.9 (1977) [hereinafter cited as IJA/ABA, *Corrections Administration.*]

In *Nelson,* the court stressed that because the ". . . state assumes the place of a juvenile's parents, it assumes the parental duties and thus, must provide what proper parental care would provide." *Id.* at 353 (7th 1974). *Cf. In re Savoy* #70-4804 (D.C. Super. Ct. 1970). While this standard does not attempt to list all of the services necessary to create a homelike atmosphere, it does list nine which are essential to the adequate care to which children are entitled.

1. An adequate and varied diet; this entails a diet which is nutritionally sound, as well as acceptable to ethnic and religious groups within the facility population. *See* Standards 4.2173, 4.45 and Commentary.

2. Varied recreation and leisure time activities; these activities should provide exercise and entertainment and should be balanced between individual and team activities. *See* Standard 4.218 and Commentary.

3. Preventive and immediate medical and dental care; this

service should provide for both diagnostic and treatment needs. *See* Standard 4.2171 and Commentary.

4. Remedial, special, vocational, and academic educational services; programs should meet the needs of the individual child and should be geared toward his/her reintegration into the community. Resources available in the community should be used whenever possible, and participation in educational and work programs in the community should be encouraged. Children with specific handicaps should only be placed in facilities where the staff is trained to be sensitive to the juveniles' needs and the facility itself is equipped to eliminate access barriers. *See* Standards 4.216-4.2163 and Commentary.

5. Protection against physical and mental abuse; the facility should provide a secure, homelike environment. *See* Standards 4.24, 4.41-4.49, 4.51-4.54, 4.61, 4.62 and Commentaries.

6. Freedom to develop individuality; this fosters the development of self-respect and dignity. *See* Standards 4.41-4.49 and Commentaries; *see also* Standards 4.112, 4.2191, 4.221, 4.231, and 4.261 relating to size of facilities.

7. Opportunity to participate or not participate in religious observances. *See* Standard 4.45 and Commentary.

8. Clean, safe, adequately heated and lighted accommodations; the facilities should conform to existing health, safety, and sanitation codes in the facility structure as well as in program operation. *See generally* Standards in the 4.2 and 4.3 series and Commentaries.

9. Maximum feasible contact with family, friends, and community, *See* Standards 4.41, 4.44 and Commentaries.

See also generally Morales, 383 F. Supp. 53, 100; *Wyatt,* 344 F. Supp. 373; *In re Savoy,* Nos. 70-4804, 70-4714 (D.C. Super. Ct. 1970); IJA/ABA, *Corrections Administration, supra* at Standard 4.9; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 14.20, 24.5, 24.10, 24.12, 24.15, and 24.16 (1976) [hereinafter cited as *Report of the Task Force*]; American Correctional Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Community Residential Services,* Standards 6136-6164 (1978).

Paragraph two focuses on the second component of the right to treatment, the quasi-medical right to treatment. This standard recognizes that the facility has the obligation to provide certain services beyond care and basic needs on an individual basis. The primary goals of the juvenile corrections system are to protect society and to assist juveniles so that they can function in the community in a law-abiding manner. The concept of rehabilitation is consistent with societal welfare. *Report of the Task Force, supra* at Standard 24.11.

As this standard recognizes, no one form of treatment is appropriate in every case. Therefore, a broad range of services should be made available, including individual and group counseling, psychiatric and psychological services, and casework services. *See also* Standards 3.182, 4.212, 4.213, 4.214, 4.215, 4.216, 4.217, 4.223, 4.233, 4.234, 4.252, 4.263, and 4.32. In all dispositions however, emphasis should be placed on community contact. During confinement in residential facilities, emphasis should be placed on treatment concepts which encourage an early return to the juvenile's community.

This standard expressly recommends that it is the juvenile's right not to be subjected to such treatment as psychosurgery, electro-shock therapy, unnecessary drug treatment, behavior modification involving excessive deprivation of personal liberties, or any other treatment which is cruel, demeaning, or dangerous. This section comports with recommendations by the IJA/ABA Joint Commission. Consent of the juvenile is irrelevant in the instances of psycho-surgery and electric stimulation of the brain, since the use of either is absolutely forbidden. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 4.10(G).

The IJA/ABA Joint Commission also prescribes limitations on programs that manipulate the juvenile's environment, such as a reward-punishment system within the scope of behavior modification. According to that standard, behavior modification may be used only after the technique is clearly explained to the juvenile and upon meeting the following three conditions: (1) the consent of the juvenile and the consent of the parents or guardian of any juvenile under the age of sixteen is obtained; (2) none of the rights set forth in the standards is infringed upon; and (3) there is no reduction in the "safe, human, caring environment." Such techniques should never be used for purposes of program management or control. *Id.* While the standard permits behavior modification programs, their use is limited. The conditions upon the use of behavior modification suggested by the IJA/ABA Joint Commission would also be appropriate under this standard.

While this standard does not specifically address the use of drugs, it is important to note the IJA/ABA approach after which this standard is fashioned. *See also* Standards 4.62, 4.217-4.2174 and Commentary for a fuller discussion of the issues surrounding drug therapy. Stimulants, and tranquilizing and psychotropic drugs should be used only under the following conditions: with the consent of the juvenile and the consent of the parents or guardians of any juvenile under the age of sixteen; the drugs are prescribed and administered by a licensed physician; the program has an approved procedure for recording all administrations of such drugs to juveniles and for monitoring the short- and long-term effects of such drugs; and personnel who administer drugs to juveniles have received specialized training. Such drugs should never be used for purposes of experimentation and research. *Id.* at Standard 4.10(F). *See also* Standard 4.62 and Commentary.

Paragraph three recognizes that the efficacy of any treatment is maximized when participation is voluntary. Therefore, this standard places upon the juvenile the obligation only to be "physically available for services ordered by the family court during the disposition period." *Accord, Report of the Task Force, supra* at Standard 24.11; IJA/ABA, *Corrections Administration, supra* at Standard 4.10 and Commentary. With the emerging right to treatment, comes the logical legal complement of the right to refuse treatment. Since the first opinion in *Wyatt,* courts have attempted to clarify the nature of the "required" treatment. What has emerged is the concept that although the state is required to rehabilitate persons confined for rehabilitation, it does not have the power, absent exigent circumstances, to exercise complete, unfettered control over these persons.

Recently a Federal District Court ruled that an involuntary mental patient may have a right to refuse treatment, and even if that right is not absolute, the patient is entitled to a due process hearing before forced administration may occur (absent, or course, in emergency situations.) *Rennie v. Klein,* 462 F. Supp. 1131 (D.N.J. 1978).

The analysis by the court is very helpful in understanding the implication of this case for juveniles entitled to rehabilitation. First, the court considered the issue of cruel and unusual punishment. Relying on *Knecht v. Gillman,* 488 F.2d. 1136, 1138 (8th Cir. 1973), the court concurred with the view that there may be Eighth Amendment violations despite claims of therapeutic value. *Rennie,* 462 F. Supp. at 1143. *Knecht* had been a challenge to force behavior modification and administration of apomorphine. The court ruled in *Knecht* that the adverse effects of the behavior modification were too harsh to justify the long-term benefits, and that the drug apomorphine had no therapeutic value. Two cases dealing with juvenile institutions have also found that drugs were used improperly and as punishment, rather than as part of an ongoing treatment plan. *See Pena v. N.Y. State Division for Youth,* 419 F. Supp. 203, 207 (S.D.N.Y. 1976); and *Nelson,* 491 F.2d at 455.

The second issue discussed by the court was the First Amendment right to freedom of expression, including the right to communicate and the right to think as suggested by Plotkin, "Limiting the Therapeutic Orgy: Mental Patients' Right to Refuse Treatment" 72 *Nw. U. L. Rev.* 461, 494 (1977). The court found that if the medication is otherwise properly administered, then the "temporary dulling of the senses accompanying it does not rise to the level of [a] First Amendment violation. . ." *Rennie,* 462 F. Supp. at 1144. However, the court cited *Kaimowitz v. Dept. of Mental Health,* Cir. No. 73-19434 (Cir. Ct. Wayne County Michigan, July 10, 1973) as support for the notion that if the dulling of the senses is unnecessary or permanent, it may be a violation of the First Amendment. *Kaimowitz* held that an adult may not give "legally adequate consent" to experimental psychosurgery, due to the vast implications regarding state control over thought. *Rennie,* 462 F. Supp. at 1143-44.

The major basis for the opinion in *Rennie* was the right to privacy. The court held that the right to privacy encompasses the right to protect one's mental processes, *Kaimowitz,* Cir. No. 73-19434 at 919; the right to autonomy over one's own body, *Roe v. Wade,* 410 U.S. 113 (1973); and the right to decline medical treatment under certain circumstances, *In re Quinlan,* 70 N.J. 10, 40; 355 A.2d 647, 663 (1976). *Rennie,* 462 F. Supp. at 1144.

The *Rennie* court based its concurrance with the above holdings after making several findings. The court felt that the recognition of a right to refuse treatment in a nonemergency situation is practical and assures the patient a greater feeling of self-reliance, *id.* at 1144-45; since a patient is the only one who can really say what discomfort is associated with the drug it is only fair to afford him/her the right to decline it, *id.* at 1145; only the patient can ultimately weigh the disadvantages against the advantages since he/she must live with the consequences, *id.* at 1145; and since disagreement on the therapeutic value of such treatment is rampant, the final decision to use a controversial mode should be left to the patient, *id.* at 1145.

Having found the basis for a right to refuse treatment, the *Rennie* court qualified that right by balancing it against state interests. The right to refuse treatment is not absolute. *Id.* 1145. Pursuant to its police power, the state may confine and administer treatment to a person who presents a danger to him/herself and/or others. *Id.* at 1145; *cf. Donaldson.* In addition, under the doctrine of *parens patriae,* the state must care for those who are unable to care for themsleves.

If either of the two justifications are found, the state's interest outweighs the right to refuse treatment. However, since there is a liberty interest, the state must afford due process. The *Rennie* court decided that a due process hearing, with the proper notice, an attorney, independent examiners (both medical and psychiatric), and access to all records must be afforded before any forced administration of treatment is carried out. *Id.* at 1147-48. The right to treatment envisioned by this standard necessarily recognizes the right to refuse treatment, which can only be outweighed by substantial state interests after a referral to the grievance mechanism. *See* Standard 4.81.

The final paragraph of the standard prohibits the use of physical force in such forms as corporal punishment, confinement, and physical restraint to compel participation on the theory that meaningful participation cannot be achieved through compulsion. This, however, does not mean that juveniles can refrain from participating without ramifications of some nature. The standard permits that failure to be available for services can be considered in determining whether to change a disposition. Extensions of the durational period however, should not be imposed because of a failure to be physically available for services except in accordance with Standards 3.1810 and 3.1811.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

3.18 Series
All standards in the Supervision Function

4.411 Denial of Enumerated Rights

The rights enumerated in Standards 4.41-4.410 should be inalienable and should not be diminished or denied for disciplinary reasons.

Source:

N.Y. Official Compilation of Codes, Rules and Regulations Sec. 171.1 (1974); *See generally* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards for Correctional Administration,* Standards 4.9-4.14, and 7.6 (draft, 1976).

Commentary

This standard asserts that the rights set forth in Standards 4.41-4.410 are inalienable and therefore should not be eroded or denied for disciplinary reasons.

The State of New York has also recognized the importance of these freedoms. Its "Bill of Rights for Juveniles" provides:

> "In recognition of the fact that juveniles residing in division for youth facilities have certain basic rights which are not lost or made negotiable by the fact of their institutionalization, the division herein commences listing specific inalienable rights applicable to all children in our care." *N.Y. Official Compilation of Codes, Rules and Regulations,* Section 171.1 (1974).

The rights protected in Standards 4.41-4.410 are those which enhance the normal growth and development of any person. They are basic to a person's integrity as well as to his/her participation in society. They become even more significant to those whose lives have been disrupted by placement in a residential facility by order of a court. If the goal of the juvenile justice system is to eliminate aberrant behavior, to care for those who need protection and to enhance the skills of children in order to produce healthy citizens, then these rights enumerated in Standards 4.41 to 4.410 should not be eroded. While privileges can be diminished as part of the disciplinary process, *see Standards 4.53 and 4.54,* the freedoms described in the 4.4 series are too significant to be curtailed for disciplinary purposes.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21	Training Schools
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.4-4.410	Rights of Juveniles
4.53	Loss of Privileges
4.54	Disciplinary Proceures

4.5 Discipline

4.51 Corporal Punishment and Use of Physical Restraint

Corporal punishment should be prohibited. However, use of physical force should be permitted:

- **a. For self-protection;**
- **b. To separate juveniles who are fighting;**
- **c. To restrain juveniles in danger of inflicting harm to themselves or others; or**
- **d. To restrain juveniles who have absconded or who are in the process of absconding.**

When use of physical force is authorized, the least force necessary under the circumstances should be employed.

Staff members of residential and nonresidential programs who are assigned to work with juveniles should receive written guidelines on the use of physical force, and written notice that corporal punishment is prohibited and that, in accordance with staff disciplinary procedures, loss of employment may result if use of corporal punishment is proven.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards on Correctional Administration,* Standard 4.8(a) and (b) (draft, 1976); *N.Y. Official Compilation of Codes, Rules and Regulations* § 168.1 (1974).

Commentary

This standard recommends the elimination of the use of corporal punishment in residential facilities and in nonresidential programs. The past abuses which have been well noted in recent cases serve as sufficient reason to expressly prohibit the use of any sort of physical punishment of children. *See, e.g., Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds,* 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F.2d 993 (5th Cir. 993 1977). However, in recognition of the very real need to employ physical force in some circumstances, the standard allows the limited and controlled use of physical force. Responsibility to provide each staff member with detailed written guidelines to be followed when employing physical force falls on the administrators of residential facilities and nonresidential programs. Notice of the prohibition of corporal punishment must also be provided. *Cf.* Standard 4.47. If after a staff disciplinary hearing, a determination is made that the physical force used on a child was actually corporal punishment, loss of employment may result.

While the issue is not completely resolved, corporal punishment in prisons has been held to be a violation of the Eighth Amendment prohibition against cruel and unusual punishment, *Jackson v. Bishop,* 404 F.2d 571 (8th Cir. 1968). That court found that corporal punishment, "irrespective of any precautionary conditions which may be imposed, offends contemporary concepts of decency and human dignity and precepts of civilization which we profess to possess." *Id.* at 579. The *Jackson* opinion made clear that corporal punishment is too hard to even try to limit. It is easily subject to "abuse in the hands of the sadistic and the unscrupulous." *Id.* at 579; it generates hate toward its inflictors and the system as a whole; it frustrates correctional and rehabilitative goals; and it makes adjustment to society much more difficult. *Id.* at 580.

Some states still permit corporal punishment to a limited degree. School systems, for example, often sanction its use. Recently the Supreme Court in *Ingraham v. Wright,* 430 U.S. 651 (1977) held that corporal punishment was not a violation of the Eighth Amendment when employed to discipline school children. The Court made a clear distinction, however, between a prisoner and a school child in the application of the Eighth Amendment's proscription against cruel and unusual punishment. The Court found that the criminal is different from the school child by virtue of a criminal conviction and subsequent incarceration. The conviction stigmatizes people and deprives them of certain freedoms. "Prison brutality . . . is part of the total punishment to which the individual is being subjected for his crime, and as such, is a proper subject for Eighth Amendment scrutiny," to eliminate "unecessary and wanton infliction of pain" while incarcerated. *Id.* at 669, 670.

The Court found, however, that the school child has little need for the protection of the Eighth Amendment. The schools are open institutions where children are seldom physically restrained from leaving during the school day and are free to leave when the day ends. Because children are surrounded by family and friends, support follows them into the schoolhouse. *Id.* at 670. This openness in the school and the supervision of the school by the community stands in place of the Eighth Amendment. If violations occur, there are numerous witnesses who may report instances of mistreatment, and there are remedies for these violations in both the criminal and civil law. *Id.* at 670. The Court declared that so long as the schools remain as open to public scrutiny as they currently are, the Eighth Amendment need not apply. *Id.* at 670.

Although juvenile delinquents are not within the realm of the criminal system, the same problems are encountered with regard to corporal punishment in juvenile residential facilities. While not considering the application of the Eighth Amendment to juvenile facilities, the Court said ". . . some punishments, though not labeled 'criminal' by the state, may be sufficiently analogous to criminal punishments in the circumstances in which they are administered to justify application of the Eighth Amendment." *Ingraham,* 430 U.S. at 669, fn. 47. This footnote was subsequently relied on in *Rennie v. Klein,* 462 F. Supp. 1131, 1143 (D.N.J. 1978) in which the Court ruled that the Eighth Amendment prohibition applied to protect persons confined in mental institutions.

While the adult criminal system is allowed to "punish" prisoners within Eighth Amendment limitations, *Hutto v. Finney,* 437 U.S. 678 (1978) the juvenile system was set up specifically to protect and habilitate juveniles. *But see* Children's Defense Fund, *Children in Adults Jails,* 1976. Nonetheless, as the Supreme Court noted in *In re Gault,* 387 U.S. 1, 22 (1967):

> "To the extent that the special procedures for juveniles are thought to be justified by the special consideration and treatment afforded them, there is reason to doubt that juveniles always receive the benefits of such a *quid pro quo* . . ."

In this light, the protection of the Eighth Amendment has been found to apply to juveniles involuntarily committed to the state's institutions, whether convicted of a crime or not. *Morales; Lollis v. New York Department of Social Services,* 322 F. Supp. 473 (S.D.N.Y. 1970).

Several lower courts have specifically applied the Eighth Amendment to prohibit corporal punishment in juvenile institutions. Ruling that beatings with thick boards as a means of discipline in a "Boys School" made up of at least one-third noncriminal offenders was contrary to the prohibition against cruel and unusual punishment, the court in *Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind. 1973) *Affd.* 491 F.2d 352 (7th Cir.), *cert. den.* 417 U.S. 976 (1974) said:

> "The uncontradicted evidence of the authorities suggests that the practice does not serve either as a useful punishment or treatment. Testimony adduced at the trial shows that it actually breeds counter-hostility resulting in greater aggression by a child." 355 F. Supp. at 454.

The philosophy of the standard's prohibition against corporal punishment in juvenile institutions is shared by many. As pointed out in the commentary to Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 4.8 (1977) [hereinafter cited as IJA/ABA, *Corrections Administration*], this prohibition is consistent with all national recommendations regarding adult and juvenile detention. *See,* e.g. American Corrections Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services,* Standard 8342, (1978) [hereinafter cited as *Manual of Standards*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 20.4 (1976) [hereinafter cited as *Report of the Task Force*].

It is important to note that this standard not only protects institutionalized juveniles, but also applies to persons residing in all types of facilities regardless of whether they are adjudicated or nonadjudicated delinquents, persons in need of court supervision, or neglected or abused children, and all children participating in nonresidential programs. The protection provided by this standard exceeds that provided by the Supreme Court in *Ingraham.* The National Advisory Committee believes that the standards set forth in *Ingraham* are insufficient to truly protect the juvenile.

Physical force, as distinguished from corporal punishment, is allowed in certain limited circumstances. The circumstances allowed are identical with those recommended by the Task Force. *Report of the Task Force, supra* at Standard 20.4; IJA/ABA, *Corrections Administration, supra* at Standard 4.8.

The standard recognizes that when faced with an imminent danger of harm to oneself or to another, it is sometimes necessary to use physical force. Physical force is also authorized to separate fighting juveniles and to restrain absconders. If any one of these circumstances should occur, the amount of physical force employed should be the least force necessary to accomplish the end desired. *Cf.* Standard 4.410 and Commentary.

Facility staff and other supervising persons are to be given written guidelines in order to determine the proper use of physical force. The purpose of written guidelines is to control the potential abuses while attempting to be fair to staff members and others who must deal with the juveniles. *Cf.* Standard 4.47. By specifically listing the kind and amount of physical force that may be employed to accomplish authorized ends, the staff member is made aware of his/her limitation.

The standard suggests that if, as a result of staff disciplinary procedures it is shown that corporal punishment was employed, the staff member may be removed from employment. Removal from employment is not required but is permitted to insure that abuses are eliminated.

The National Advisory Commission recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21 Training Schools
4.219 High Security Juvenile Units
4.22 Camps and Ranches
4.23 Group Homes
4.24 Community Correctional Facilities
4.25 Foster Homes

4.26	Detention Facilities
4.27	Shelter Care Facilities
4.3	Nonresidential Programs
4.46	Responsibility for Control and Apprehension of Juveniles
4.410	Right to Treatment
4.411	Denial of Enumerated Rights
4.52	Confinement
4.53	Loss of Privileges
4.54	Disciplinary Procedures
4.61	Mechanical Restraints
4.62	Medical Restraints
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.52 Room Confinement

Juveniles should be placed in room confinement only when no less restrictive measure is sufficient to protect the safety of the facility and the persons residing or employed therein. No juvenile should be placed in room confinement for more than one hour unless the procedures set forth in Standard 4.54 have been followed. Room confinement for more than twenty-four hours should never be imposed.

Ordinarily the place of confinement should be the juvenile's own room. When this is not possible, the place of confinement should be lighted, heated, cooled, and ventilated the same as other living areas in the facility and should be furnished with the items necessary for the juvenile's health and comfort. Juveniles placed in room confinement in facilities other than a foster home should be examined at least once during the day by a physician, visited at least twice during the day by a child-care worker or other member of the treatment staff, and be provided with educational materials and other services as needed. Juveniles placed in room confinement in foster homes should be visited periodically by the foster parent.

Juveniles placed in room confinement for more than twelve hours should be provided with at least thirty minutes of recreation and exercise outside of the room in which they are confined. No child placed in room confinement should be denied the rights set forth in Standards 4.41-4.410.

Source:

See generally New York Official Compilation of Codes, Rules and Regulations §§168.2(c), (d), and (i) (1974).

Commentary

This standard recommends the use of room confinement only when there is no other way to prevent danger to the facility or to persons living or working within it. Before room confinement can exceed one hour, the juvenile must be given notice of the infraction, access to the ombudsman and an opportunity to respond to the allegations against him/her. *See* standard 4.54. Under no circumstances should a juvenile be kept in room confinement for more than twenty-four hours.

If the confinement is not in the juvenile's own room, then the place of confinement is required to have light, heat, and ventilation and be furnished to ensure the juvenile's health and comfort. None of the rights enumerated in Standards 4.41-410 should ever be diminished or denied. *See* Standard 4.411.

A juvenile residing in a residential facility other than a foster home must be examined once during the day by a physician and must have at least two visits by a child-care or treatment worker. Children residing in foster homes should be visited periodically by the foster parent. For every twelve hours of confinement, the standard requires that the juvenile be given thirty minutes of recreation outside the confinement room.

The standard is similar to recommendations made by the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 20.4 (1976) [hereinafter cited as *Report of the Task Force*]; the American Corrections Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services,* Standards 8336-8340 (1978) [hereinafter cited as *Manual of Standards*]; and the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 8.7 (1977) [hereinafter cited as IJA/ABA, *Corrections Administration*]. However, as the IJA/ABA Joint Commission indicates, there is a certain arbitrariness in assigning time limits to sanctions. IJA/ABA, *Corrections Administration, supra* at Standard 8.7. For example, the IJA/ABA standard would allow up to ten days of room confinement; the Task Force on Juvenile Justice and Delinquency Prevention recommends a maximum of five consecutive days, *Report of the Task Force, supra* at Standard 20.4; the *Manual of Standards, supra,* does not set an outside limit but leaves that determination to the hearing examiner. *Manual of Standards,* Standard 8340. As previously indicted, this standard permits no more than twenty-four hours of room confinement. Isolation is a severe penalty to impose upon a juvenile, especially since this sanction is to assist in rehabilitation as well as to punish a child. The National Advisory Committee considered the time limits suggested by other standards-setting commissions and determined they were too harsh. After a period of time, room confinement begins to damage the juvenile, cause resentment toward the staff, and serves little useful purpose. *See also* Standard 4.54 and Commentary. If a juvenile's behavior is so severe that the safety of the facility or the people residing or working there is threatened, serious consideration should be given to transferring the juvenile to a more secure facility. *See* Standard 4.71.

Isolation has historically been subject to abuse. The very term connotes a draconian sanction for severe infractions of rules. The National Advisory Committee believed that the best way to eliminate these abuses and to provide appropriate treatment and sanctions was to curtail the length of room confinement and establish a method for transfers of highly disruptive or mentally-ill juveniles. This standard, in conjunction with Standard 4.71 and 4.73, implements that decision.

All of the standards-setting organizations relied heavily on a number of cases which challenged the maltreatment of juveniles in institutions. In *Lollis v. New York State Department of Social Services,* 322 F. Supp. 473 (S.D.N.Y. 1970), while finding that confinement per se was not unconstitutional, the court ruled that the treatment of the plaintiff exceeded permissible bounds and therefore violated the Eighth Amendment prohibition against cruel and unusual punishment. In that case, the petitioner was a 14-year-old girl adjudicated a person in need of supervision, who was kept in a 6′ x 9′ room for 24-hours-a-day for two weeks. During that time, she was dressed in nightclothes and was provided with neither recreational facilities nor reading materials. Although she was visited by a social worker for the first seven or eight days, only one visit was made during the remaining period. The court quoted Judge Burstein who discovered the conditions under which Lollis was confined. "I do not suggest [he said] that commodious accommodations must be accorded to children who disturb the tranquility of the community, . . . [O]n the other hand, the cruelty of isolation and solitary confinement ought not be augmented by surroundings so oppressive as to destroy the integrity and the identity of the child who, after all, is the object of our concern and who must ultimately be returned to the community." *Id.* at 476.

Based on the facts and on expert testimony, the Judge granted an injunction and ordered the superintendent of the facility to prepare standards for the use of solitary confinement. Those standards were to include: (1) maximum time limits for confinement; (2) location of confinement; (3) normal furnishings and reading material within the confinement room; (4) recreation, including exercise and fresh air; (5) rules regarding the extent to which a child may join in common activities despite isolation; (6) provisions for staff visitation; and (7) the maximum number of times a juvenile may be confined during the year.

Shortly after the *Lollis* case, *Nelson v. Heyne,* 355 F. Supp. 451 (N.D. Ind.) *aff'd.* 492 F.2d 352 (7th Cir.) *cert.den.* 417 U.S. 987 (1974), and *Inmates of Boy's Training School v. Affleck,* 346 F. Supp. 1354 (D.R.I. 1972) were decided. On facts similar to those in *Lollis* as well as on the testimony of experts which revealed that "prolonged and total isolation . . . is emotionally and psychologically debilitating and serves neither treatment nor punitive goals," *Nelson,* 355 F. Supp. at 456, the court found that the confinement violated the Eighth Amendment prohibition against cruel and unusual punishment and was ". . . totally devoid of the most rudimentary notions of procedural due process." *Id.* at 456.

On his opinion, Judge Grant stated that the use of solitary confinement does not of itself constitute cruel and unsual punishment. However, he held that the conditions of confinement are subject to the limitations of the Eighth Amendment and that the resident is entitled to due process before confinement. *Id.* at 457. Again, as in *Lollis,* the court order the institution to prepare standards. Similarly, in *Inmates,* the court found that ". . .[t]o confine a boy without exercise, always indoors, almost always in a small cell, with little in the way of education or reading materials, and virtually no visitors from the outside world, is to rot away the health of his body, mind and spirit. To then subject a boy to confinement in a dark and stripped confinement cell with inadequate warmth and no human contact can only lead to his destruction." *Id.* at 1366. Again, the court ordered the facility to make changes in its program.

In 1974, the Supreme Court supported the notion that due process must be afforded before one may be placed in solitary confinement. In *Wolff v. McDonnell,* 418 U.S. 539 (1974), the Court set forth procedures that must be followed before an adult prisoner may be confined to an isolation cell. Those procedures included: advance written notice of the violation; a written statement of the evidence relied upon and the reasons for the disciplinary action; and an adversary hearing. *See* Standard 4.54 and Commentary for a fuller discussion of *Wolff.*

In *Morales v. Turman,* 383 F. Supp. 53, 84-5 (E.D. Tex. 1974), *rev'd on other grounds,* 535 F.2d 364 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322 (1977), *remanded on rehearing,* 562 F.2d 993 (5th Cir. 1977), the court reviewed conditions in the entire juvenile justice system in Texas In earlier hearings on this matter, the court had found solitary confinement conditions very similar to those found in the aforementioned cases. Texas was required to establish standards governing solitary confinement of a juvenile. Finding the proposed standards inadequate, the court listed several mandatory guidelines. The court ruled that the standard for subjecting a juvenile to maximum security should be a finding supported by psychiatric or psychological personnel that the juvenile is exceptionally dangerous and could likely cause severe injury to him/herself or others. *Id.* at 84.

Pre-adjudicated children have also been protected by the courts. *In re Savoy,* #J-4808-70 (D.C. Super Ct. 1976) the court ordered that children be placed in isolation for a limited time if serious violations of the rules occurred and if a hearing preceded the placement. The court did, however, allow privileges to be denied since ". . . the institutional authorities must obviously have some effective sanctions available to discourage major criminal activity." *See also Pena v. New York Division for Youth,* 419 F. Supp. 203 (S.D.N.Y. 1976).

Finally, in *Morgan v. Sproat,* 432 F. Supp. 1130 (S.D. Miss. 1977), the court found unconstitutional the use of "Intensive Treatment Unit" cells which contained only a combination wash basin and commode and a concrete slab built into the wall for sleeping. There were windows with opaque glass and no artificial lighting. One cell was padded and had no window, furnishings, or sleeping slab. The plaintiffs were confined alone, they ate their meals in the cells, they were not allowed to talk with other students, and they were not allowed to lie down or sleep during the day. They were denied all privileges. The length of time spent in isolation averaged eleven days, but record showed that some residents were confined up to eighty-five days. *Id.* at 1138.

The court relied on all the previously discussed cases in finding the conditions existing in the "Intensive Treatment Unit" violative of the prohibition against cruel and unusual punishment and the right to treatment and rehabilitation guaranteed by the due process clause of the Fourteenth Amendment. The court permitted a very limited use of isolated confinement. The court ruled that: (1) placement may only occur if the resident constitutes an immediate threat to the physical well-being of him/herself or others; (2) confinement may not exceed twenty-four hours and must be approved by the superintendent of the facility or another in a responsible position; (3) visits by staff must occur every three hours; (4) the cells must be provided with transparent windows, lights, mattresses, bedclothes, personal hygiene articles; and (5) that inmates must be afforded minimum privileges such as reading materials and the ability to correspond. *Morgan* went beyond the previous cases by relating solitary confinement to the concept of individualized treatment. Previous cases had set out minimum constitutional requirements to be followed for everyone. The *Morgan* court found that the right to treatment required individualized treatment plans to insure that placement in room confinement, even when otherwise justified, will not be allowed if any emotional or psychological harm will result. *Id.* at 1140.

This standard, in conjunction with Standard 4.54, incorporates the procedural and substantive safeguards enunciated by the courts whenever room confinement is imposed in residential facilities. The standard permits residential facilities to impose room confinement to control juveniles, while assuring that the juveniles' health and well-being are safeguarded. Although not specifically stated in this standard, a sufficient number of reviews and evaluations ensure that room confinement will not occur when it interferes with the individualized treatment. *Morgan. See* Standards 4.2141, 4.2171, 4.410, 4.54, and 4.82. Additionally, this standard requires periodic checks of the juvenile by physicians, child-care workers, or foster parents depending upon the facility, whenever room confinement occurs. Some recreational time is also mandated. Finally, it must also be emphasized that while room confinement is permitted, the rights discussed in Standards 4.41-4.410 are inalienable, *see* Standard 4.411, and as such must be accorded to juveniles even while in room confinement.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.47	Notice of Rules
4.410	Right to Treatment
4.411	Denial of Enumerated Rights
4.54	Disciplinary Procedures
4.61	Mechanical Restraints
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.53 Loss of Privileges

The temporary suspension of a privilege enjoyed by a juvenile who is detained or subject to the dispositional authority of the family court should be an authorized form of discipline. A juvenile should be advised of the privileges subject to suspension and a list of such privileges should be posted in each residential facility. No juveniles should have a privilege suspended unless the procedures set forth in Standard 4.54 have been followed. In any event no privilege should be suspended for a period of more than fourteen consecutive days.

Food, including snacks, toiletries, and other items necessary for a minimum quality of life, as well as the rights enumerated in Standards 4.41-4.410, should not be diminished or denied for disciplinary purposes.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards on Correctional Administration,* Standard 8.7 (draft, 1976); *N.Y. Official Compilation of Codes, Rules and Regulations: Discipline of Children* § 168.1 (1974).

Commentary

This standard is related to other standards in the 4.5 series in setting forth the proper sanctions involved in disciplinary procedures. *See* Standards 4.51, 4.52, and 4.54. The standard allows temporary suspension of privileges only if the juvenile has been previously informed of the privileges subject to suspension, if the list of rules and suspendable privileges is posted in each residential facility, *see* Standard 4.47, and if the procedures set forth in Standard 4.54 are followed.

Food, toiletries, and other basic necessities may never be subject to suspension. Nor may the rights set forth in Standards 4.41-4.410 be diminished or denied for disciplinary reasons. *See* Standard 4.411; *accord,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 8.6 (1977) [hereinafter cited as IJA/ABA, *Corrections Administration*].

Privileges of juveniles residing in residential facilities other than a foster home may not be suspended for more than twenty-four hours without providing notice of the infraction, access to the ombudsman, or an opportunity for the juvenile to respond to the allegations against him/her. *See* Standard 4.54 and Commentary. If a privilege of a juvenile in any facility is suspended for more than seven days, the juvenile must be given notice of the infraction and a recorded hearing where he/she is represented and given the opportunity to present favorable evidence and rebut unfavorable evidence before an impartial hearing examiner. *See* Standard 4.54. The hearing should precede the suspension of a privilege and reviews of the decision by an agency official should be available. *Id.* Under no circumstances should privileges be suspended for more than fourteen days. *Id.*

As the court in *In re Savoy,* #J-4808-70, (D.C. Super. Ct. 1976) stated: "[I]nstitutional authorities must obviously have some effective sanctions available to discourage major criminal activity" *Id.* at 4. This standard recognizes that having removed or limited the traditional forms of punishment such as corporal punishment, *see* Standard 4.51, physical restraints, *see* Standard 4.61, and medical restraints, *see* Standard 4.62, there must be some sanctions left in order to control behavior in the facilities. However, while privileges may be suspended, the suspension should be accomplished in a manner that enhances rehabilitation. It should not be used solely for punitive purposes.

The American Correctional Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services,* Standard 8333 (1978) [hereinafter cited as *Manual of Standards*] is similar to this standard and suggests that the privileges subject to suspension be: use of television, radio, or phonographs; smoking; visits from friends (as distinguished from family); and special activities outside the facility. At no time should meals, clothing, sleep, health care services, school, exercise, correspondence, parental visits, or legal aid be affected in any way. *Id.* at Commentary. This standard would permit suspensions of all of these privileges except visitation. *See* Standard 4.44, 4.411.

The IJA/ABA, *Corrections Administration, supra* at Standard 8.7 is similar but additionally provides for time limitations for the suspension of privileges based on the nature of the infraction. Major infractions would result in suspension of privileges for up to thirty days; minor infractions incur suspensions for up to fifteen days; and petty infractions incur suspensions for up to seven days. That standard suggests that access to movies, radio, television, participation in recreational or athletic activities, participation in outside activities, off-ground privileges, access to the telephones (except for calls to family or attorneys) are legitimate activities that may be curtailed. The IJA/ABA standards also indicate that outdoor activities and recreational activities may be suspended. IJA/ABA, *Corrections Administration, supra* at Standard 8.7. This does not appear to be consistent with the ruling of several courts nor is it consistent with this standard. In *Lollis v. New York State Department of Social Services*, 322 F. Supp. 473 (S.D.N.Y. 1970), the court ruled that one of the minimum necessary constitutional requirements is that a child be provided with recreation. *Id.* at 483. Two years later in *Morales v. Turman*, 383 F. Supp. 53 (E.D. Tex. 1974), *rev'd on other grounds*, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded*, 430 U.S. 322, *remanded on rehearing*, 562 F.2d 993 (5th Cir. 1977), that court ruled that one of the minimum elements of an adequate professional treatment plan was an ". . . opportunity for adequate recreation and exercise . . ." *Id.* at 100. Finally, in *Frazier v. Ward*, 426 F. Supp. 1354 (N.D.N.Y. 1977) speaking in regard to adult prisoners, the court weighed the disastrous psychological and phsycal damage caused by prolonged deprivation of exercise, and concluded that it constituted cruel and unusual punishment in violation of the Eighth Amendment."*Id* at 1369.

The denial of food, toiletries, and other items necessary for a minimum quality of life is prohibited. This is consistent with recommendations of other standards-setting commissions and case law. Although primarily dealing with room confinement, the cases indicate that the maintenance of diet, toiletries, and similar items are minimum constitutional requirements. *See Lollis; Nelson v. Heyne*, 355 F. Supp. 451, *affd.* 491 F.2d 352 (7th Cir.), *cert. den.* 417 U.S. 987 (1974); *Inmates v. Boys Training School v. Affleck*, 346 F. Supp. 1354 (D.R.I. 1972); *Morales v. Turman; Pena v. New York Division for Youth*, 419 F. Supp. 203 (S.D.N.Y. 1976); *In re Savoy;* and *Morgan v. Sproat*, 432 F. Supp. 1130 (S.D. Miss. 1977); *see* Standard 4.52 and Commentary. As previously discussed in the Commentaries to Standards 4.41-4.410, rights related to correspondence, dress, personal appearance, visitation, mental and physical care may not be denied. These are basic liberties, not privileges. They may never be diminished or denied for disciplinary reasons, *See* Standard 4.411, nor can education be considered a privilege. The courts have held that even while in room confinement, a child must be afforded at least reading material. Educational opportunities, therefore, should not be considered appropriate for suspension. *Nelson; Inmates; Pena; Lollis;* and *Savoy*. *Accord*, IJA/ABA, *Corrections Administration, supra* at Standard 8.7. *But see Goss v. Lopez*, 419 U.S. 565 (1974).

As noted with regard to room confinement, the IJA/ABA, *Corrections Administration, supra* indicate that time limitations are arbitrary. *See* Standard 4.52 and Commentary. The guidelines incorporated into this standard by Standard 4.54 were determined by reference to court decisions holding that certain periods of time were beyond constitutional limitations. *See generally* Standard 4.52 and Commentary. The time limit recommended by this standard is lower than that recommended by the IJA/ABA Joint Commission. The National Advisory Committee believed that suspensions continuing beyond fourteen days could be subject to abuse, cause resentment toward the staff and lose their rehabilitative purpose. In a similar vein, the committee believed that while a limited suspension of a privilege is a useful device, not all privileges should be suspended for a single infraction.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.47	Notice of Rules
4.410	Right to Treatment
4.411	Denial of Enumerated Rights
4.54	Disciplinary Procedures
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.54 Disciplinary Procedures

A chronological record of all disciplinary actions taken against juveniles placed in residential facilities should be maintained. This record should contain the name of the juvenile disciplined, the name of the person imposing the discipline, and the date of, the duration of, the actions leading to, and the reasons for the disciplinary action.

Before juveniles placed in a residential facility other than a foster home may be confined in a room, including their own room, for more than one hour, or have a privilege suspended for more than twenty-four hours, they should be given notice of the alleged infraction, access to the facility ombudsman or to a person in an equivalent capacity, and opportunity to respond to the allegations.

Before juveniles placed in any residential facility including a foster home may have a privilege suspended for more than seven days, there should be a hearing to determine whether the allegations are true and whether the sanction is appropriate. In conjunction with that hearing, the juvenile should be entitled:

a. To written notice of the rule violated and date, time, place, and nature of the alleged violation on which the hearing is based;
b. To adequate time to prepare;
c. To representation by the facility ombudsman, a member of the facility staff other than the ombudsman, another juvenile, or a volunteer from an established volunteer program;
d. To present evidence and testify;
e. To confront and cross-examine witnesses;
f. To an impartial hearing officer or board;
g. To have the hearing tape-recorded, the tape maintained by the agency for a two-year period, and access to the tape or a transcript thereof; and
h. To review of the decision by the agency director or an agency official above the level of facility director who reports to the agency director, or by an independent review board.

The hearing officer or board should be empowered to extend the period of suspension to a maximum of fourteen consecutive days.

Sources:

See generally Goss v. Lopez, 419 U.S. 565, 581 (1974); National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standards 20.5 and 20.6 (1976).

Commentary

This standard recommends the procedures to be followed when disciplinary actions are taken against juveniles in residential facilities. Detailed records of each action and its disposition should be maintained and preserved.

The standard describes the procedures required before confining a child in any room for more than one hour or suspending a privilege for more than twenty-four hours and before suspending a privilege for more than seven days. In the former, children in residential facilities other than foster homes are granted access to an ombudsman, notice of the infraction, and an opportunity to respond to the allegations against him/her. In the latter instance, a child in any facility is entitled to a formal hearing to determine the veracity of the allegations and the appropriateness of the sanction. A decision rendered orally at the hearing should be submitted in writing within two days to the agency, to the child, and to the placing family court. This standard also recommends a fourteen-day limitation on privilege suspensions.

Whenever the state seeks to deprive a person of a constitutionally or state-guaranteed entitlement, due process of law requires an opportunity to be heard on the issue. *Meachum v. Fano,* 427 U.S. 215 (1976). Due process, however, is a flexible concept that must be tailored to the interests of those involved. *Morrissey v. Brewer,* 408 U.S. 471 (1972); *Cafeteria Workers v. McElroy,* 367 U.S. 886 (1961). In *Matthews v. Eldridge,* 424 U.S. 319 (1974), the Supreme Court set forth three criteria which must be considered when fashioning the appropriate process due in a given situation:

> First, the private interest that will be affected by the deprivation [including the degree of potential deprivation]; second, the risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Matthews,* 424 U.S. at 338.

Both before and after *Matthews,* the Supreme Court discussed the procedures necessary to protect the rights of adult inmates regarding suspension of privileges. In 1974, the Supreme Court considered the due process procedures required at a disciplinary hearing involving residents in adult correctional institutions who were facing the loss of good time credit. *Wolff v. McDonnell,* 418 U.S. 539 (1974). The Court stated that due process required: (1) written notice at least twenty-four hours prior to the hearing; (2) a written statement of the evidence relied on and reasons for the proposed disciplinary action; and (3) a hearing which includes the right to call witnesses in ones behalf as long as it does not endanger institutional safety. The Court established neither a right to confront and cross-examine witnesses nor a right to counsel. If the inmate is illiterate or the case involves a complex issue, however, the accused should be provided with representation. *Id.*

More recently, the Court Reaffirmed *Wolff* in *Baxter v. Palmigiano,* 425 U.S. 308 (1976). Again the Court stated that an inmate has no right to retained or appointed counsel at the hearing. According to the Court, the ability of the inmate to call, confront, and cross-examine witnesses is within the discretion to prison officials. *Id.*

The Supreme Court has also addressed the issue of procedural due process in the context of public high school disciplinary proceedings and has held that students facing temporary suspension have interests which qualify for procedural protection. *Goss v. Lopez,* 419 U.S. 565 (1974). When a student faces a suspension of ten or fewer days, he/she must be given oral or written notice of the charges against him/her, and, if they are denied, school authorities must explain the reasons for their proposed action and allow the juvenile to present his/her version of the events. *Id* at 581. Although notice and hearing should precede suspension, the Court noted that in situations where the student's presence endangers persons or property or threatens disruption of the academic process, notice, and hearing following an immediate suspension is justified. *Id* at 586. The Court refused to construe the due process clause to require that the student be given the opportunity to secure counsel, to confront and cross-examine witnesses supporting the charge, or to present his/her own witnesses. *Id* at 584. Importantly, the Court stated that its holdings are confined to short suspensions, not exceeding ten days, and stated that longer suspensions or expulsions may require more formal proceedings. *Id* at 586. *See also Wood v. Strickland,* 420 U.S. 308 (1974) (Court remanded a case involving expulsion of public high school students for a discussion of procedural due process requirements).

This standard, with support from other commentators and case law, provides that due process procedures be utilized before imposing disciplinary sanctions against juveniles in residential facilities. The standard also recommends that the facility maintain a chronological record of all disciplinary actions taken against its residents. The record should include the child's name, the name of the person imposing the discipline, and the date of, the duration of, the action leading to, and the reasons for the disciplinary action. This assures that the right to review will be meaningful and will be based on accurate records. *See* Standard 1.53.

The standard also recognizes the facility's need for some latitude in disciplining children. Thus, confining a child to any room for less than one hour or suspending a privilege for less than twenty-four hours does not require any formal proceeding prior to the imposition of the sanction. Standards 4.81 and 4.82 do, however, narrow the scope of the institution's power in this regard by providing grievance procedures and the ability to refer unwarranted discipline to the ombudsman.

This standard provides that a child in a facility other than a foster home facing room confinement of more than one hour or privilege suspension of more than twenty-four hours, be accorded the right to notice of the allegation, access to a facility ombudsman or a person of similar status, and an opportunity to respond to the allegation. This is similar to the minimum procedures set forth in *Goss* and the Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration,* Standard 8.8 (1977) [hereinafter cited as IJA/ABA, *Corrections Administration*]. It does, however, expand on both by providing the child with the opportunity to consult with the facility ombudsman before being asked to respond to the allegations. While the sanctions imposed are not *de minimis, see Goss,* they are not so great that full due process hearings are warranted. Room confinement can extend no more than twenty-four hours for each instance requiring disciplinary actions. A suspension of a privilege can extend only up to seven days. While this may seem harsh to a juvenile it is not very severe. In light of the sanctions, this procedure provides sufficient protection for the juvenile while not unduly hampering the facility program.

Foster homes are exempt from this procedure. The goal of a foster home is to recreate to the greatest extent possible a normal home environment. This procedural process would be counter to that purpose. Since abuses are more likely to occur in large facilities, it is not unreasonable to require more formal procedures in them. Further, should abuses occur in a foster home, resort to the ombudsman and the grievance procedure is always available to remedy the problem. *See* Standard 4.81 and 4.82.

The standard requires that a hearing be held to determine whether allegations are true and to determine whether the sanctions are appropriate in cases where a child faces suspension of privileges for more than seven days. *See* National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 20.5 (1976) [hereinafter cited as *Report of the Task Force*] (full due process hearing required when facing more than twenty-four hours in secure quarters).

Specifically, the child is entitled to the following:

a. Written notice of the rule violated and the date, time, place, and nature of the alleged violation upon which the hearing is based.

b. Adequate time to prepare. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 8.9 (written notice twenty-four hours after discovery of infraction); *Report of the Task Force, supra* at Standard 20.5 (2) (written notice of the allegation and evidence forty-eight hours in advance of fact-finding decisions); *In re Savoy,* J-4808-70 (D.C. Super. Ct.

1976) at 7 (oral notice to be followed by written notice of allegation and procedure to obtain representation; hearing to follow within forty-eight hours of written notice).

c. Representation by the facility ombudsman, a member of the facility staff other than the ombudsman, another juvenile, or a volunteer from an established volunteer program. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 8.9; *Report of the Task Force, supra* at Standard 20.5(3) (fact finders should provide substitute counsel for children who do not comprehend proceedings as a result of complexity or lack of maturity or intellectual ability; translator to be provided for non-English speaking children); *In re Savoy* at 8 (representative of child's choice, chaplain, or staff member).

d. Present evidence and testify.

e. Call and cross-examine witnesses. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 8.9; *Report of the Task Force, supra* at Standard 20.5(4); *In re Savoy* at 8, 9.

f. An impartial hearing officer or board. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 8.9 (three-person board: one member not an employee at the facility); *Report of the Task Force, supra* at Standard 20.5(1); and *In re Savoy,* at 8 (three staff members; one on the counseling staff).

g. A tape-recorded hearing with the tape maintained by the agency for a two-year period and with access to the tape or a transcript thereof. *Accord, Report of the Task Force, supra* at Standard 20.5(5) (right to receive written record); and *In re Savoy* at 9.

h. Review of the decision by the agency director or an agency official above the level of facility director who reports to the agency director, or by an independent review board. *Accord,* IJA/ABA, *Corrections Administration, supra* at Standard 8.9 (review by program director and by independent review board); *Report of the Task Force, supra* at Standard 20.6 (review on one of three grounds: procedural violations; new, relevant evidence; disposition disproportionate in relation to findings); *In re Savoy* at 9,10 (by superintendent who may suspend decision, remand case, approve or decrease sanction).

This standard recommends that the decision should be rendered orally at the hearing. A written decision including facts and reasons underlying the determination, should be submitted within two days to the agency. The child and the placing family court should each receive a copy. *Accord, Report of the Task Force, supra* at Standard 20.5(5); *In re Savoy* at 9 (both establishing the right to a written copy of board's disposition). The purpose of providing a written copy of the decision is to assure that the agency and the child are aware of the exact nature of the event and the reasons why sanctions were imposed. This will prevent later misinterpretations by others working with the juvenile. Similarly, if the court is to meaningfully review the case, it should be clearly informed regarding all aspects of the juvenile's progress.

If additional sanctions are warranted, the hearing officer may extend the suspension for a period not to exceed a total of fourteen days. See IJA/ABA, *Corrections Administration, supra* at Standard 8.9 (ten-day limit on room confinement; thirty-day limit on suspension of privileges); *In re Savoy,* (seven-day limit on room confinement). *See also* Standard 4.53 and Commentary.

Foster homes are not exempt from this provision. The National Advisory Committee believed that extended sanctions should always be imposed by a neutral fact finder. Despite the fact that the potential for abuse of suspensions is less in foster homes than in other facilities, resort to the more formal procedure is still warranted.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

3.2	Noncourt Adjudicatory Proceedings
4.21	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.47	Notice of Rules
4.410	Right to Treatment
4.411	Denial of Enumerated Rights
4.51	Corporal Punishment
4.52	Confinement
4.53	Loss of Privileges
4.61	Mechanical Restraints
4.62	Medical Restraints
4.81	Grievance Procedures
4.82	Ombudsman Program

4.6 Use of Restraints

4.61 Mechanical Restraints

Mechanical restraints should be used only when a juvenile is uncontrollable and constitutes a serious and evident danger to him/herself or to others, or during transportation when necessary for public safety. Use of mechanical restraints except during transportation should not be imposed for more than a half hour. When in restraints, a juvenile should not be attached to any furniture or fixture.

Sources:

New York Official Compilation of Codes, Rules and Regulations §168.3(a) (1974).

Commentary

This standard recommends the elimination of the use of mechanical restraints in all but a few regulated circumstances. The term mechanical restraints is meant to include handcuffs, ropes, chains, straitjackets, and other such types of security equipment. Mechanical restraints may only be used when a juvenile is not otherwise controllable and presents a danger to him/herself or others. If used, mechanical restraints may not be imposed for more than a half hour, nor should they be used to attach a juvenile to furniture or fixtures. Another recognized exception is for the transportation of juveniles. If restraints are needed to protect the public, they may be used for the duration of the transportation.

The restriction on the use of mechanical restraints is based on the concept of least restrictive alternative. *See* Standard 4.410 and Commentary. In *Shelton v. Tucker,* 264 U.S. 297 (1960), the Supreme Court held that "even when government purposes are legitimate and substantial, they should not be pursued by means that "broadly stifle fundamental personal liberties when the end can be more narrowly achieved," at 488. *Cf. Morales v. Turman,* 383 F. Supp. 53 (E.D. Tex. 1974) *rev'd on other grounds,* 585 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F.2d 993 (5th Cir. 1977). Quoting from *Furman v. Georgia,* 408 U.S. 238, 279 (1971), the 7th Circuit in *Nelson v. Heyne,* 491 F.2d 352, 354 (7th Cir.), *cert. den.,* 417 U.S. 987 (1974) followed a similar test in determining that Eighth Amendment violations occurred in a juvenile reform school.

> . . .The infliction of a severe punishment by the state cannot comport with human dignity when it is nothing more than the pointless infliction of suffering. If there is a significantly less severe punishment adequate to achieve the purposes for which the punishment is inflicted, the punishment is unnecessary and therefore excessive.

This philosophy has also been implemented by many state statutes. *See* National Law Center, *Law and Tactics in Juvenile Cases,* 547 (1977); Standard 4.410 and Commentary.

Standard 4.61 is meant to regulate those few circumstances that require the use of mechanical restraints. The guidelines to be followed are those established in *Pena v. New York State Division for Youth,* 419 F. Supp. 203 (S.D.N.Y. 1976). In that case, the court found that ". . . the use of such physical restraints is highly anti-therapeutic and should be tolerated only in cases where a child is a serious and evident danger to himself or others and incapable of being controlled by any less restrictive means such as restraint by a staff member." *Id.* 211. The court forbade mechanical restraints for longer than thirty minutes (except in transportation situations) and absolutely prohibited the binding of hands and feet and the restraining of a juvenile to a piece of furniture.

This absolute prohibition against their use for over thirty minutes (except when in transit) and against attaching juveniles to fixtures reflects the belief that neither is necessary in most situations and that when legitimate needs arise, they are of short duration. Room confinement provided for by Standard 4.52 is adequate to confine and control most juveniles who are harmful to him/herself or others. Additionally, casework and psychiatric services should be sufficient once the outburst has subsided.

Thirty minutes is regarded as the maximum time necessary to control a juvenile and to get him/her to a less restrictive setting. The only recognized exception occurs when a juvenile is being transported. Due to the security limitations of a vehicle, it may be necessary to use mechanical restraints to ensure public safety. The implication of the standard's exception is that this should only be considered if public safety is a real concern and then, only for as long as the juvenile is in actual transit.

To attach anyone to a piece of furniture unnecessarily is to degrade them and to damage their human dignity. The standard grants no exceptions to this prohibition. The standards as a whole reflect an attempt to make the juvenile justice system more humane. Strictly limiting the unnecessary use of mechanical restraints is one step in this direction. *Accord,* American Correctional Association, Commission on Accreditation for Corrections, *Manual of Standards for*

Juvenile Detention Facilities and Services, Standard 8308 (1978) [hereinafter cited as *Manual of Standards*].

The Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administration, Standard 7.8 (1977)* [*hereinafter cited as* IJA/ABA, *Corrections Administration*] is much stricter than this standard. The IJA/ABA, *Corrections Administration, supra* would only allow mechanical restraints during transportation. The IJA/ABA Joint Commission found two reasons for this position. First, the small size of the program should never necessitate such restraints within the facility, and second, the consistent history of abuse of these methods in juvenile corrections settings demand their prohibition.

The IJA/ABA, *Corrections Administration, supra* at Standard 7.8 Commentary cites *Pena* and *Morales* as justification. In *Pena,* agency regulations and state statutes had been developed regarding mechanical restraints before the case was brought. Despite these regulations, the abuses by staff members were found to be rampant in both instances.

The IJA/ABA, *Corrections Administration* reflects the position that cases like *Morales* and *Pena* prove that, despite regulations, infractions will occur. This standard, although recognizing that past abuse has occurred, nevertheless allows a very limited use of restraints to accommodate facility concerns. In a case where an abuse does occur, referral to the grievance mechanism, *see* Standard 4.81, or to the ombudsman, *see* Standard 4.82, is sufficient to insure that future abuse does not occur.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.3	Nonresidential Programs
4.46	Responsibility for Control and Apprehension of Juveniles
4.47	Notice of Rules
4.410	Right to Treatment
4.411	Denial of Enumerated Rights
4.54	Disciplinary Procedures
4.62	Medical Restraints
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.62 Medical Restraints

For the purposes of these standards, medical restraints are medication administered either by injection or orally for the purposes of quieting an uncontrollable juvenile.

Medical restraints should be administered only in situations in which a juvenile is so uncontrollable that no other means of restraint can prevent the juvenile from harming him/herself. Medical restraints should be authorized only by a physician and should be administered only by a physician or a registered nurse.

Orders authorizing registered nurses to administer prescribed psychiatric medication at their own discretion for purposes of crisis intervention, should only be issued by a psychiatrist who has examined the juvenile and determined that such an order is required by the juvenile's ongoing treatment needs. A report should accompany each such order explaining the facts and reasons underlying it and providing specific instructions. The order should be re-examined weekly to determine whether the order is still necessary. If the order is continued, a written report explaining the facts and reasons underlying the continuation should be prepared monthly. A copy of reports explaining the issuance or continuance of such orders should be provided to the director of the facility and placed in the juvenile's file.

Sources:

See generally New York Official Compilation of Codes, Rules and Regulations §168.3(b) (1974).

Commentary

This standard recommends guidelines for the use of medication administered orally or by injection for the purposes of quieting an uncontrollable juvenile where no other means of restraint can prevent the juvenile from harming him/herself. The standard requires authorization by a physician and allows only physicians and registered nurses to administer any medical restraints.

Authorization for registered nurses to administer psychiatric medication for crisis intervention at their own discretion is only allowed if: (1) it is issued by a psychiatrist who has examined the juvenile and determined that the order is consistent with ongoing treatment needs; (2) a report explaining facts and reasons behind order and providing detailed instructions and guidelines for administering the drugs accompanies the order; and (3) the juvenile is re-examined weekly to determine if the need still exists. If the order is continued, a report must be filed monthly setting forth the facts and reasons for its continuation. A copy of all reports should be given to the director of the facility and also placed in the juvenile's file. *See* Standard 1.5 for provisions concerning confidentiality.

Nelson v. Heyne, 491 F.2d 352 (7th Cir.), *cert.den.,* 417 U.S. 987 (1974) ruled that the use of medical restraints under conditions existing at an Indiana training school violated the prohibition against cruel and unusual punishment. The court ruled that the state's interest in punishment and the control of excited behavior did not justify exposing the juvenile to the potential hazards involved. *Id.* at 357. In *Pena v. N.Y. State Division for Youth,* 419 F. Supp. 203 (S.D.N.Y. 1976) the court found that requirements similar to those recommended by this standard were the "minimal constitutional standards which must be adhered to in the administration of a juvenile training school." *Id.* at 208-209. The *Pena* court found that in light of the fact that those regulations were in effect when the abuses took place, special additional requirements must be maintained in using medical restraints. Thorazine, a major tranquilizing drug, was not allowed except as a part of an ongoing treatment plan and the option of taking medication orally or intramuscularly was given to the juvenile. The present standard does not specifically address either of these issues. However, when read in conjunction with Standards 4.410 and 4.214, this standard would forbid the use of major tranquilizing drugs which were contrary to the treatment plan. Further, the use of oral medication should be preferred. *See* Standards 4.410 and 4.214 and Commentaries.

This standard like the American Correctional Administration, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services,* Standards 8247 through 8250 (1978), is meant to prohibit the use of stimulants, tranquilizers, or psychotropic drugs for purposes of program management and control or for purposes of experimentation and research. Medical restraints are only allowed to protect the juvenile. As long as a juvenile is not endangering him/herself, medical restraints may not be used. Where a juvenile's behavior becomes uncontrollable and disruptive to other juveniles other forms of control are appropriate. *See* Standards 4.51-54; 4.61 and Commentaries. The standards recognize no circumstance where the safety of others cannot be ensured through the use of some sort of physical restraint, *see* Standard 4.61, room confinement, *see* Standard 4.52, or simple separation of the juveniles. In employing medical restraints, as with any other restraints, the least restrictive and dangerous drug should be used. *See* Standard 4.410 and Commentary.

The standard differentiates between medical restraints and psychiatric medication. Medical restraints, as explained above, are limited to absolute emergency situations. Even then, they must be authorized by a psychiatrist and administered only by the physician or a registered nurse.

The third paragraph of the standard refers to psychiatric medication which is determined to be part of a juvenile's ongoing treatment needs in crisis situations. Evidence presented in *Nelson* showed that the use of "tranquilizing drugs administered to the juveniles can cause the collapse of the cardiovascular system, the closing of a patient's throat with consequent asphyxiation, a depressant effect on the production of bone marrow, jaundice from an affected liver, drowsiness, hemotological disorders, sore throat and ocular changes." *Id* at 357. Other psychopharmacological drugs used in the treatment of emotional disturbances cause a number of varied reactions, among them suicidal tendencies, death due to ventricular abnormality of the heart, alteration of sleep habits, and muscle twitching. *Handbook of Psychiatry*, 3rd Ed., 453-461 (Solomon, Philip, and Patch, ed. 1974).

The procedural requirements of the third paragraph of the standard will serve to prevent dangerous abuses in the use of drugs. The child's health will be protected by constant monitoring and periodic reviews of the treatment program. No drugs should be allowed which do not have a therapeutic and habilitative purpose, *cf. Naughton v. Berilacqua*, 458 F. Supp. 610 (D.R.I. 1978) (prolixin could not be used absent a habilitative purpose). *See also* Standard 4.2142 and 4.410 and Commentaries. The specified report is required to document all treatment given to a juvenile as well as to set forth the reasons behind all procedures used.

It has been suggested that since all potent tranquilizers interfere with a person's mental functioning, ability to think clearly, and general ideas, their use could violate an element of free speech protected by the First Amendment. National Juvenile Law Center, *Law and Tactics in Juvenile Cases*, §23.8 (1977). An analogy to drug use in mental hospitals may also be made. In *Rennie v. Klien*, 462 F. Supp 1131 (D.N.J. 1978) the district court judge found that an involuntarily-committed mental patient may have a right to refuse medication in the absence of an emergency and due process must be followed before administration of the drugs is forced upon the person. The decision was based on the right to protect one's mental processes from government interference which emerges from the right to privacy. *Id.* at 1144.

Since the right to privacy is not absolute, the court indicated three factors it perceived as capable of overriding that right. First, the state's police power permits it to confine a person who is a danger to him/herself or others; second, under the doctrine of *parens patriae*, the state may care for those who cannot care for themselves; and finally, the state may argue that medication is the least restrictive alternative under the circumstances. These state interests may only override the right to privacy if due process is afforded beforehand. *Id.* at 1145-1147. In addition to periodic reviews and reports which are required by this standard, the *Rennie* court ordered a hearing before any forced administration of medication. *Id.* at 1147.

The Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Administrations*, Standard 4.10F (draft, 1976) allows the use of stimulants, tranquilizers, and psychotropic drugs only with the consent of the juvenile and the consent of the parent or guardian of a juvenile under 16 years old. There can be no forced medication unless an emergency stituation arises. This standard, in conjunction with standard 4.410, accomplishes the same purpose. *See* Standard 4.410 and Commentary. Additionally, enough safeguards are built into these standards to ensure that abuses do not occur. *See* Standards in the 1.4 series and Commentaries; *see also* Standards 2.245, 2.344, 4.214, 4.217, and 4.410; 4.6 series; 4.8 series; and respective Commentaries.

The National Advisory Committee recommends this adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.3	Nonresidential Programs
4.46	Responsibility for Control and Apprehension of Juveniles
4.47	Notice of Rules
4.410	Right to Treatment
4.411	Denial of Enumerated Rights
4.52	Confinement
4.54	Disciplinary Procedures
4.61	Mechanical Restraints
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.7 Transfer Procedures

4.71 Transfers from Less Secure to More Secure Facilities

Each state should classify the public and private facilities providing residential care for juveniles subject to the jurisdiction of family court over delinquency or noncriminal misbehavior according to the level of security maintained. A list of the facilities in each category should be published each year.

Before a juvenile placed in a residential facility may be transferred to a cottage, wing, or structure within that facility which meets the definition of a high security unit set forth in Standards 4.219-4.2194, or which has security features equivalent to those found in any more secure category of facility, or to another facility in a more secure category, a hearing should be held. At that hearing the juvenile should be entitled to all rights specified for disciplinary hearings in Standard 4.54(a)-(g).

A juvenile should only be transferred to a more secure facility or unit if:

a. **The juvenile poses a danger to him/herself or others:**
b. **The juvenile's actions demonstrate that he/she cannot be controlled in the facility or unit or placement due to its lack of security; or**
c. **The service benefits to the particular juvenile of the more secure facility or unit substantially outweigh any detrimental effect of the greater constraints on liberty.**

A copy of a decision approving transfer to a more secure facility or unit should be provided to the placing family court for review, to the juvenile, the juvenile's representative, and to the juvenile's parent or guardian.

Transfers from nonresidential programs to residential programs and from foster care to other residential programs should only be authorized after a judicial hearing pursuant to Standards 3.1810 or 3.1811.

Sources:

See generally Fenner v. Luger, 73 CIV 552 (S.D.N.Y. 1975); *Morales v. Turman,* 383 F. Supp. 53, 84 (E.D. Tex. 1974), rev'd on other grounds, 535 F.2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F.2d 993 (5th cir. 1977). M. Goddard, *From Minimum to Maximum Security in Juvenile Corrections: Transfer Boards or On-Site Hearings* (unpublished manuscript, 1977); *New York Official Compilation of Codes, Rules and Regulations: Guidelines for Transfer, §175.1 (1974).*

Commentary

This standard provides that each state should annually publish a list that classifies public and private juvenile residential facilities according to the level of security maintained. *Accord,* Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Standards Relating to Corrections Adminsitration,* Standards 7.1. (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*]. These standards contemplate the creation of an array of residential facilities ranging from nonsecure foster homes, *see* Standard 4.25, to high security units, *see* Standard 4.219, within residential training schools, *see* Standard 4.21. Each existing facility should be examined and classified according to degree of security maintained. As states and local communities develop new facilities, each should be classified by the state agency. By annually publishing a list of facilities according to its level of security, and re-evaluating the classifications periodically, *see* Standard 1.125, judges, attorneys, social workers and correctional personnel will have the ability to match the proper facility to the needs of the individual child.

From time to time, facility supervisors will determine that a transfer of the juvenile to a more secure facility is appropriate. The Supreme Court has determined that a transfer of an adult inmate to a higher level of security within the prison system is not an infringement of the inmate's Fourteenth Amendment liberty interest. *Meachum v. Fano,* 427 U.S. 215 (1976). The Court's holding was based on the absence of either a Constitutional right or state-induced expectation to remain at a single level of security once the inmates's liberty had been deprived for violations of the criminal law. The rehabilitative process in general and these standards in particular presuppose the use of the least restrictive alternative necessary to rehabilitate law violators and status offenders. *See* Standard 4.410 and Commentary. As such, juveniles in the system have the expectation of minimal and appropriate security. Once the state-induced expectation exists, procedural due process is required. *Cf. Meachum; Montanye v. Haymes,* 427 U.S. 236 (1976).

The standard permits transfers to a more secure facility as long as a recorded administrative hearing is held for which the child has had notice and time to prepare, representation—though not necessarily by counsel—and the opportunity to present favorable evidence and rebut unfavorable evidence before an impartial hearing officer. *See* Standards 4.54 (a-g); 3.2*cf.* IJA/ABA, *Corrections Administration, supra* at Standard, 4.5; and National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 20.5 (1976). In *Morales v. Turman,* 383 F. Supp. 53, (E.D. Tex 1974), rev'd on other grounds, 535 F 2d 864 (5th Cir. 1976), *rev'd and remanded,* 430 U.S. 322, *remanded on rehearing,* 562 F.2d. 993 (5th Cir. 1977) the court held that a decision to transfer a juvenile to a secure setting must be made in accordance with procedural due process. Other courts have also held that transfers of juveniles to more secure settings require hearings which comport with due process safeguards. *See Shone v. Maine,* 406 F.2d 844 (1969); *People ex rel. Goldfinger v. Johnston,* 280 N.Y.S.2d 304 (1967); *Fenner v. Luger,* (73 CIV 552, S.D.N.Y. 1975) (unpublished consent order). The standard limits transfers from less secure to more secure facilities to circumstances that show the juvenile is dangerous to him/herself or others, is uncontrollable in the present setting, or if the benefit derived from a more secure setting outweighs the detrimental effect on the youth's liberty.

The N.Y. Official Compilation of Codes, Rules and Regulations: Transfers §§175.1-.4 (1974) mandates that a child be transferred to a more secure facility when the child is a "serious and evident danger to him/herself and to others" to such a degree that a more secure setting "is the only alternative," or when the treatment and rehabilitative resources are inadequate to handle the behavior of the child and a more secure setting "is the only alternative." The code does not, however, require as extensive a hearing as that recommended by this standard. While the procedures recommended by this standard will entail more than the New York procedure, the curtailment of liberty warrants the additional procedural protections.

This standard requires that a copy of the decision to transfer to a more secure facility be provided to the juvenile, his/her parents, his/her representative, and to the placing family court judge for review. This will ensure that the child or the court can prevent any transfers which are not warranted.

Transfers from nonresidential programs to residential programs and from foster homes to more secure residential programs may be authorized only after a judicial hearing has taken place pursuant to Standard 3.1810 or 3.1811. This measure indicates a preference for family court approval of any drastic change in the child's placement. There is no doubt that the transfer from one residential facility to another is a less significant incursion into an adjudicated juvenile's liberty expectations than is a transfer from a foster home to a more secure facility or from a nonresidential program to a residential program. Because more is at stake, decisions should only be made after a hearing before the judge who issued the original dispositonal order. This standard, in conjunction with Standards 3.1810 and 3.1811, views this kind of transfer as similar to a revocation of probation which should comport with due process guarantees. *See Gagnon v. Scarpelli,* 411 U.S. 790 (1973); Standards 3.1810, 3.1811 and Commentary. While such transfers are permitted, less drastic action should always be considered preferable. But to the extent necessary, transfers into residential facilities from nonresidential programs and from a foster home to more secure facilities will be permitted if performed in accordance with due process principles.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice..

Related Standards

1.125	Evaluation of Local and State Efforts
3.1810	Enforcement of Dispositional Orders—Delinquency
3.1811	Enforcement of Dispositional Orders—Noncriminal Misbehavior
3.182	Criteria for Dispositional Decisions—Delinquency
3.181	Duration of Dispositional and Type of Sanction—Delinquency
3.171	Rights of the Parties
3.189	Review and Modification of Dispositional Decisions
3.2	Noncourt Adjudicatory Proceedings
4.11	Role of the State
4.21	Training Schools
4.219	High Security Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.3	Nonresidential Programs
4.410	Right to Treatment
4.72	Transfers from Less Secure to More Secure Facilities
4.82	Ombudsman Programs

4.72 Transfers from More Secure to Less Secure Facilities

Transfer from more secure to less secure facilities may be made without a hearing. Written notice of the transfer and of the reasons therefore should be provided to the juvenile, the juvenile's parent or guardian, and to the placing family court.

Sources:

See generally Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standards 2.2(b), 2.3(b) (draft, 1976) [hereafter cited as IJA/ABA, *Corrections Administration*].

Commentary

This standard permits administrators to transfer juveniles to less secure facilities without a prior hearing. Such transfers are indicative of rehabilitative progress on the part of the juvenile and of an assessment by the staff that more freedom is consonant with the needs of the individual child. *See* Standard 4.410 and Commentary.

Because the transfer results in more freedom to the juvenile rather than less, the procedural requirements recommended by Standard 4.71 are not necessary. *Cf.* IJA/ABA, *Corrections Administration, supra* at Standard 4.5. Written notice of the transfer must be given to the juvenile, the juvenile's parent or guardian and the placing court. However, no hearing is required before the transfer occurs. Even though great deference should be paid to decisions made by administrators in this area, it is conceivable that the juvenile, his/her parents or the juvenile court judge may disagree with the transfer. The provisions for notice in conjunction with review hearing recommended by Standard 3.189 will provide an opportunity to review the decision to transfer in these rare situations.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

3.189	Review and Modification of Dispositional Decisions
4.21	Training Schools
4.219	High Security Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.3	Nonresidential Programs
4.71	Transfers from Less Secure to More Secure Facilities

4.73 Transfers Among Agencies

Transfers from a juvenile facility in which a juvenile has been placed by the family court to a facility under the jurisdiction of a separate agency for the care of the mentally ill or for the care of narcotic addicts or drug abusers, should only be permitted following a hearing before a family court judge.

Transfers of juveniles from youth agencies to adult correctional agencies should be prohibited.

Source:

S.M. Davis, *Rights of Juveniles,* Sec. 6.08 (1974); Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standards 2.2(b) and 2.3(b) (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*].

Commentary

This standard recommends that a hearing before a family court judge be held before any transfer is made from a juvenile facility to a facility operated by an agency for the care of the mentally ill or mentally retarded or of drug addicts or abusers. It also recommends that committed juveniles never be transferred to adult jails.

The IJA/ABA, *Correction Administration, supra* at Standards 2.2 and 2.3; and National Advisory Committee on Criminal Justice Standards and Goals, *The Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 19.6(1) (1976) also prohibit the transfer of juveniles to adult jails and require that a due process hearing be held before a family court judge before a juvenile is transferred to a mental institution. Both are silent regarding transfers to institutions housing drug abusers and narcotic addicts. The American Correctional Association, Commission on Accreditation for Corrections, *Manual of Standards for Juvenile Detention Facilities and Services,* Standards 8005, 8006, and 8400-8403 (1978) is in accord with all provisions in this standard.

The prohibition against transferring juveniles to adult facilities is based on the differing philosophies underlying the juvenile and adult systems. As the court in *White v. Reid,* 125 F. Supp. 647 (D.D.C. 1954) pointed out, ". . . the basic function and purpose of a penal institution is punishment as a deterrent to crime and that unless the institution to which a juvenile is committed is intended for and adapted to guidance, care, education and training rather than punishment, and unless its supervision is that of a guardian and not that of a prison guard or jailer, commitment to such institution is by reason of conviction of crime and cannot withstand an assault for violation of fundamental Constitution safeguards." *Id.* at 650. *Baker v. Hamilton,* 345 F. Supp. 345 (W.D. Ky. 1972).

In a class action brought on behalf of all juveniles placed in an adult jail in Louisville, Kentucky, the court found that such placement violated the Fourteenth Amendment as well as state statutes in that it treated juveniles as adults for punitive purposes, yet did not accord them the same procedural due process accorded adults. *Baker.* Additionally, the court found that confinement to the adult jail violated the Eighth Amendment's prohibition against cruel and unusual punishment in that no attempt at rehabilitation was being made and that terrible living conditions prevailed at the jail. *Id.* at 353.

United States ex rel. Murray v. Owens 341 F. Supp. 722, *rev'd on other grounds,* 465 F.2d 289 (2d Cir. 1972), *cert. den.,* 409 U.S. 1117 (1973) does not absolutely prohibit the confinement of juveniles in adult prisons, but holds that a New York statute which permits a 15-year-old to be committed to an adult facility while denying him a jury trial was unconstitutional. The court stated that, ". . . it is fundamentally unfair to try the offender as a child, but then to imprison him as an adult." *Id.* at 724.

This standard would forbid any transfers of juveniles to adult facilities. As the IJA/ABA, *Corrections Administration, supra* points out, ". . . the underlying rationale for a separate juvenile justice process applies equally to the administration of juvenile corrections. The juvenile justice process serves to protect juveniles from full exposure to the criminal justice system." IJA/ABA, *Corrections Administration, supra* at Standard 2.2 and Commentary. The attempt to eliminate bad influences emanating from "hardened" adult criminals is clear: the absolute prohibition of the transfer of juveniles to adult facilities to prevent such exposure. *See* IJA/ABA, *Corrections Administration, supra* at Standard 2.2 and Commentary. Further, considerable administrative "initiative and leadership" will be needed to ensure the implementation of programs designed to habilitate juveniles. If this responsibility is shared by the same agency which controls adult facilities, policy could become obscured by the dual function. IJA/ABA, *Corrections Administration, supra* at Standard 2.2 and Commentary.

This standard also prohibits the administrative transfer of a committed juvenile to a facility which cares for mentally-ill or retarded persons or to one which cares for drug addicts or abusers. It has been held that a transfer of an adult from a prison to a mental health institution involves more than a simple administrative decision. *U.S. ex rel Schuster v. Herald,* 410 F.2d 1071 (2d Cir.), *cert. den.,* 396 U.S. 847 (1969) found that such transfers involve rights of an important nature. Not only does the transfer "effectively eliminate the possibility of [plaintiff's] parole, but it significantly increases the restraints on him, exposes him to extraordinary hardships, and causes him to suffer indignities, frustrations and dangers, both physical and psychological, which he is not required to endure in a typical prison setting." *Id.* at 1078. In addition, there is the "terrifying possibility" that a transferred prisoner may not be mentally ill or retarded at all or that he may remain in the mental facility for a period longer than his original sentence. *Id.* at 1078-9.

Finding that there was substantial disparity between the procedural protections afforded to those who were facing involuntary civil commitment to a mental institution from the outside and the mere administrative decision to have a prisoner transferred to a mental institution, the court held that the prisoner was deprived of equal protection of the law.

The court relied heavily on *Baxtrom v. Herold,* 383 U.S. 107 (1966) which held that, "Where the state has provided for a judicial proceeding to determine the dangerous propensities of all others civilly committed to [a mental facility] it may not deny this right to a person [who has been criminally convicted] solely on the ground that he was nearing the expiration of a prison term." *Id.* at 114. The court in *Schuster* cited other authority, including a New York State Court decision which extended *Baxtrom* to a youth transferred from a correctional school to an institution for defective delinquents. *Schuster,* 410 F.2d at 1082, citing *People ex rel. Goldfinger v. Johnton,* 43 Misc. 2d 949, 280 N.Y.S.2d 304 (Sup. Ct. 1967). The court held that a full hearing with all the safeguards afforded to civilians was required for incarcerated persons.

In *Matthews v. Hardy,* 137 U.S. App. D.C. 39 (1969) the court found that a transfer to a mental hospital from a prison must be accomplished by the same procedure as a civil commitement for four reasons: (1) there is a stigma attached to the mentally ill which is different from that attached to the criminal class in general; (2) there are more restrictions on one's freedom and routines in a mental hospital than in a prison; (3) the length of time spent in the mental hospital could be longer than the original sentence; and (4) a person mistakenly placed in a mental hospital might suffer irreparable "severe emotional and psychic harm" *Id.* at 42, 43.

Two state supreme courts have recently held that a juvenile faced with commitment to a mental institution is entitled to the protection of due process safeguards. In *In re Michael E.,* 123 Cal. 103, 538 P.2d 231 (1975), the California Supreme Court held, on both constitutional and statutory grounds, that the commitment of a ward of the juvenile court to a mental institution can only occur in accordance with the civil commitment statute of California. The North Carolina Court of Appeals has similarly held that juveniles are entitled to the same due process protections as adults in any proceeding where a loss of liberty is a possible result. *In re Myers,* 25 N.C.App.35, 214 SE2d 268 (1975).

The standard recommends that the states require a hearing before a family court judge prior to transferring a juvenile to a mental health or retardation facility. In *Parham v. J.R.,* 442 U.S. 584 (1979) the Supreme Court ruled that some kind of inquiry should be made by a neutral fact finder to determine whether the statutory requirements for admission of a ward of an agency to the hospital are satisfied . . . [and] that the child's continuing need for commitment be reviewed periodically by a similarly independent procedure. *Id.* at 597. The Court felt that in balancing the interests of children, parents, and the state, an evaluation by a staff physician to determine the child's need for hospitalization provided sufficient due process safeguards when an agency sought to commit one of its wards to a mental facility. However, the Court stated that states were free to require a formal procedure if it saw fit to do so.

Relying on the lower court decisions cited *Infra,* the National Advisory Committee believes that the risk of erroneous commitments of state wards is too great to allow a commitment without a prior adversial hearing before the family court judge. *Parham,* 442 U.S. at 608, (Justice Brennan concurring and dissenting). As the Supreme Court acknowledged, there is a risk that children without natural parents will be lost in the shuffle or that commitments may be extended because of state agency difficulties in locating alternative placements. *Id.* at 600. These standards contemplate the use of the least restrictive alternative necessary to provide appropriate treatment. *See* Standard 4.410 and Commentary. Without an independent evaluation of the restrictiveness in relation to the necessary treatment, agencies will often use facilities which provide more control than is necessary since they are usually more readily available. Further, adverse social affects can result from mental health commitments. The use of hearings before the family court judge combined with reviews of the process, *See* Standard 3.189, will avoid these problems.

The standard also requires a hearing before a transfer of a juvenile from a juvenile facility to one which cares for drug abusers and narcotic addicts. As in mental institutionalization, more restraints, more danger, more rigid programming, indignities, and so forth, may occur in a drug treatment center as opposed to a juvenile facility. *See Schuster,* 410 F.2d at 1078. The psyche of a youth could be severely damaged if incorrectly placed in a drug center with persons of all ages who are addicted, undergoing withdrawal, or knowledgeable about hard drugs.

The procedures at the hearing should comply with Standard 3.171. Adequate notice must be given in advance to afford the juvenile opportunity to prepare a defense. *See also Bunday v. Cannor,* 328 F. supp. 165 (D. Md. 1971), *Modified,* 453 F. Supp. 856 (D. Md. 1978) (adult prisoner denied due process). The presence of the person is required, unless the right has been knowingly and intelligently waived. *See also Lynch v. Baxley,* 386 F. Supp. 378 (M.D. N.D. 1974). Counsel is required to enable the person to effectively utilize any of the due process protections. *Id.* at 389. A juvenile should also be able to confront and cross-examine witnesses and offer evidence on his/her own behalf. *Rennie v. Klein,* 462 F. Supp. 1131,1147, (D. N.J. 1978). "Because the stigmatization and loss of liberty attendant upon forced confinement are of the most profound consequence to the individual affected . . . ," due process requires that a judge be persuaded by "clear, unequivocal, and convincing evidence . . ." that the transfer is necessary. *Lynch*, 386 F. Supp. at 393; *Addington V. Texas*, 441 U.S. 418 (1979). These protections go far beyond the minimum due process procedures set forth by the Supreme Court in *Parham, supra*. The Court required no more than an inquiry to be conducted by a psychiatrist which probes the child's background and includes interviews with relevant persons in the life. *Parham*, 442 U.S. at 597. Nevertheless, the Court indicated that the states were free to adopt the more stringent procedures. It is the committee's belief that additional safeguards are warranted to protect the child.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

3.171	Rights of the Parties
3.189	Review and Modification of Dispositional Decisions
4.21	Training Schools
4.219	High Security Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Shelter Care Facilities
4.71	Transfers from Less Secure to More Secure Facilities
4.72	Transfers from More Secure to Less Secure Facilities
4.81	Grievance Procedures
4.82	Ombudsman Program

4.8 Grievance Procedures and Ombudsman Programs

4.81 Grievance Procedures

Written grievance procedures should be established for all residential and nonresidential programs. Each juvenile should be provided with an explanation and a copy of these procedures at the time the juvenile is admitted to the facility.

Although the form of grievance procedures may vary, all such procedures should provide for:

- **a. Review of grievances by an agency official above the level of the facility director, and by an independent review board, or an impartial individual not employed by the agency;**
- **b. Time limits for resolution of the grievance; and**
- **c. Involvement of staff and juveniles**

Sources:

D. McGuillis, J. Mullen, and L. Studon, *Controlled Confrontation: The Ward Grievance Procedure of the California Youth Authority* (1976); Institute of Judicial Administration/American Bar Association Joint commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 9.2 (draft, 1976) [hereinafter cited as IJA/ABA, *Corrections Administration*]; National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 20.2 (1976).

Commentary

This standard recommends the establishment of written grievance procedures for juvenile residential facilities and nonresidential programs. A grievance mechanism has been defined by the IJA/ABA, *Corrections Administration, supra* at Standard 9.2 as an:

> administrative procedure at which complaints of individuals about residential programs or department policies, personnel, conditions or procedures can be expressed and resolved. IJA/ABA, *Corrections Administration, supra* at Standard 9.2.

Both the IJA/ABA, *Corrections Administration, supra* at Standard 9.2, and the National Advisory Committee on Criminal Justice Standards and Goals, *Report of the Task Force on Juvenile Justice and Delinquency Prevention,* Standard 20.2 (1976) [hereinafter cited as *Report of the Task Force*] provide for the establishment and implementation of grievance procedures. The *Report of the Task Force, supra* at Introduction to Chapter 20.2 states that such grievance procedures:

> provide a mechanism which enables juveniles to influence their lives and environment in an appropriate way . . . (They) provide the juveniles with new skills for cooperation and negotiation with others while recognizing and enhancing the juveniles dignity and self-esteem [and] . . . facilitate the kind of personal development that for many juveniles is a necessary prelude to the successful handling of problems in a nondelinquent manner.

Further, the *Report of the Task Force, supra,* states that formalized procedures provide a way to reduce the conflict and tensions inherent in any correctional setting or program. *Report of the Task Force,* Introduction to Chap. 20.

This standard contemplates the same purposes for a grievance procedure as do the *Report of the Task Force, supra,* and IJA/ABA, *Corrections Administration, supra.* By requiring that all juveniles be provided with explanations of such grievance procedures upon entering juvenile facilities, the standard attempts to insure that the procedure is used and not simply a "paper program." *See generally Ward Grievance Procedure,* CYA, 5 (1976). *See also* Standard 4.47 and Commentary.

Neither this standard nor the IJA/ABA or Task Force Standards provides for a specific form of grievance procedure. The IJA/ABA, *Corrections Administration, supra* at Standard 9.2 states that "while the establishment of some grievance mechanism seems highly desirable, no single model or procedure exists which could be implemented in all residential programs for juveniles in the country." Thus, although a specific type of program is not mandated, this standard recommends that a procedure be established that includes review of grievances, time limits, and the involvement of staff and juveniles. If the grievance procedure is to operate properly to protect juveniles and to enhance the administration of juvenile justice, all three components are necessary. Grievances will be actually settled, staff and juveniles will work together to seek solutions, and when disagreement occurs, an unbiased decision maker can resolve it.

Section (b) of this standard states that time limits should be set for the resolution of grievances. The *Report of the Task Force, supra,* and IJA/ABA, *Corrections Administration,* supra do not set specific time limits. The IJA/ABA, *Corrections Administration, supra* states that time limits are a critical factor, and the *Report of the Task Force, supra* states that a prompt, full hearing should be conducted and that grievances should be resolved at the earliest possible time. *See* IJA/ABA, *Corrections Administration, supra* at Standard 9.2 and Commentary; *Report of the Task Force, supra,* Intro. to Chap. 20, and Standard 20.2 and Commentary; *see also Ward Grievance Procedures of the California Youth Authority* (1976). Since each state's system will be different, no specific limit is provided by the standard. However, the California procedure which requires resolution of grievances within thirty days is a reasonable one.

It should be noted that Standards 4.71 (Transfers) and Standard 4.52 (Room Confinement) provide for specific hearing procedures and that corporal punishment and the denial of specified rights are specifically prohibited by these standards. *See* Standards 4.51 and 4.411. Thus, although the Task Force provides that the grievance procedure be a method whereby a juvenile can ask for a review of imposed discipline, these standards provide for specific procedures to be utilized before the imposition of discipline. *See* Standards 4.54 and 4.71. Finally, it should be noted that Standard 4.43 contemplates an automatic referral to the grievance mechanism whenever a facility seeks to remove a juvenile's hair without his/her consent. In those cases, an expedited procedure may be necessary.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21	Training Schools
4.219	High Security Juvenile Units
4.2191	Population and Size
4.2193	High Security Units—Services
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention facilities
4.27	Transfer Procedures
4.3	Nonresidential Programs
4.41-4.411	Rights of Juveniles
4.51-4.53	Discipline
4.61-4.62	Use of Restraints
4.81	Grievance Procedures
4.82	Ombudsman Programs

4.82 Ombudsman Programs

In addition to the grievance procedures described in Standard 4.81, juveniles placed in residential or nonresidential programs should have access to an ombudsman.

The ombudsman should investigate matters adversely affecting juveniles under agency supervision which are not raised in grievance procedures, and whenever possible should serve on the assessment team for juveniles placed in training schools. Ombudsmen should report to the director of ombudsmen or, if such a position has not been created, to an agency official above the level of facility director who should not be administratively responsible for the program in which the ombudsman is assigned to serve.

Ombudsmen should have substantial experience in the area of juvenile law, youth services, and investigation.

In order to encourage residents, staff, and administrators to communicate freely with the ombudsman, statements made to the ombudsman should be statutorily protected as privileged communication. The privilege may be waived by the person providing the information.

Ombudsman reports should not form the basis for agency disciplinary action. However, based upon information brought to light by the ombudsman, the agency should initiate its own independent investigations which may give rise to agency action.

Sources:

Institute of Judicial Administration/American Bar Association Joint Commission on Juvenile Justice Standards, *Proposed Standards Relating to Correctional Administration,* Standard 9.2 (draft, 1976); M. Goddard, *The Ombudsman in the New York State Division for Youth Facilities* (1974); H. Hoffman, "The Limits of Litigating Alternatives to a Lawsuit," *Prisoner Rights Sourcebook* (1973); M.D. Kannersehn, *A Report on the New York Division for Youth: Ombudsman Project,* The Council of State Governments (1974); M.Goddard, *The Ombudsman Handbook* (1972).

Commentary

This standard recommends that juveniles in residential and nonresidential programs have access to an ombudsman. This standard is based upon the experience of the New York State Division for Youth Facilities which created an Office of Ombudsmen within its legal division in 1972. Goddard, *The Ombudsman in the N.Y. State Division for Youth Facilities* (1974). Under the New York Program, four ombudsmen who were attorneys specializing in family court matters traveled to the state schools and received complaints from the residents on matters involving their legal rights. This standard, unlike the New York program, does not mandate that the ombudsmen be attorneys. However, it requires that the ombudsman have substantial experience in the area of juvenile law, youth services, and investigation. while attorneys could fill this role, other professionals familiar within the system are also eligible. This will increase the pool of persons eligible to serve as ombudsmen.

Under the New York program, when the ombudsman believes a complaint is within his/her jurisdiction, he/she has the power to interview staff members and residents and to examine records. The ombudsman will prepare a factual report on legitimate complaints which is forwarded to the superintendent of the school, the director of the Division of Youth, the director of the Ombudsman Project, and an independent review board. The review board assists in resolving problems and serves as an external check on the project's effectiveness. *See generally* Goddard, *supra. See also* Hoffman, *Prisoner's Rights Sourcebook* (1973).

This standard provides that the ombudsman investigate matters that are not raised in grievance procedures. Ombudsmen can initiate investigations where a juvenile has not made, or does not want to make, a formal complaint, or where the matter to be investigated is not appropriate for a grievance procedure. The latter may involve matters of misfeasance or malfeasance by the facility administrators, matters pertaining to the quality of treatment or compliance with state laws requiring specific standards for educational programs. The role of the ombudsman is more encompassing than the grievance procedure and provides a method for the immediate identification of developing problems and the transmission of information pertaining to them to the director of ombudsmen or to an appropriate agency official.

The combination of the grievance and disciplinary procedures and the ombudsman program will ensure maximum protection of a juvenile's rights while in residential settings. The existence of an ombudsman can also facilitate the flow of information to outside groups, provide a perspective different from that the staff regarding the program and individual needs of children, stimulate change and improvement in the treatment of children, and provide an ongoing evaluative mechanism to monitor the types of treatment children are receiving in facilities. *See generally* M. Kannersehn, "Ombudsman Project: the Council of State Governments," *A Report on the N.Y. Division for Youth"* (1974). The ombudsman also has the authority to monitor the grievances of and delivery of services to juveniles under community supervision.

This standard also urges statutory protection for statements made to the ombudsman. *Cf.* Standards 1.51-1.56. Such protection is necessary in order to achieve the proper levels of communication between the ombudsman and the residents or staff. The protection is in the form of a waivable privilege held by all persons providing information.

Standard 1.126 provides for the creation of a State Office of Youth Advocacy which is not part of the agency responsible for supervision. That program is set up as an external monitor, whereas the ombudsman recommended by this standard constitutes an internal monitoring system within the state youth agency. The ombudsman provided by this standard acts as an early warning mechanism to alert the agency to situations that negatively affect juveniles in its custody. By placing the ombudsman inside the program, institutional animosity can be avoided. Further, the state youth agency should be given the opportunity to correct its shortcomings through its own efforts before an outside agency forces those changes upon them.

The purpose of the Office of Youth Advocacy, on the other hand, is to expose those abuses that are not expeditiously corrected by the youth agency itself. The Office of Youth Advocacy is also concerned with monitoring the entire state program involving children and not just the supervision program. *See generally* Standard 1.126 and Commentary.

The National Advisory Committee recommends the adoption of this standard as an action each state can take immediately, without a major reallocation of funds, to improve the administration of juvenile justice.

Related Standards

4.21	Training Schools
4.219	High Security Juvenile Units
4.22	Camps and Ranches
4.23	Group Homes
4.24	Community Correctional Facilities
4.25	Foster Homes
4.26	Detention Facilities
4.27	Transfer Procedures
4.3	Nonresidential Programs
4.41-4.411	Rights of Juveniles
4.51-4.53	Discipline
4.61-4.62	Use of Restraints
4.71-4.73	Transfers From Less Secure to More Secure Facilities
4.81	Grievance Procedures

GENERAL IMPLEMENTATION PLAN

General Implementation Plan

As indicated in the introduction to this report, one of the purposes of the Juvenile Justice and Delinquency Prevention Act of 1974 is to "encourage the implementation of national standards on juvenile justice . . . [through] recommendations for adminstrative, budgetary, and legislative action at the Federal, state, and local level to facilitate . . . [their] adoption . . ." 42 U.S.C. §5602(5) (Supp. 1979).

Among the provisions in the JJDP Act designed to carry out this purpose are: section 224(a)(5) which authorizes the awarding of Special Emphasis grants and contracts to facilitate the adoption of the standards recommended by the National Advisory Committee; Section 225(c)(6) which includes among the criteria to be considered in awarding Special Emphasis grants and contracts, "the extent to which the proposed program facilitates implementation" of the National Advisory Committee's recommendations; section 247(d) which directs the National Institute for Juvenile Justice and Delinquency Prevention to develop and support model state legislation consistent with the Act and the National Advisory Committee standards; and, section 247(b) which requires the National Advisory Committee to submit together with its standards, recommendations which set forth Federal, state and local actions which will facilitate their adoption throughout the United States.

In addition, the recently enacted Justice System Improvement Act, 42 U.S.C. 3701 (Supp. 1980) includes within authorized uses of formula grant funds "improving conditions of detention and confinement in juvenile correctional institutions as measured by the number of such institutions administering programs meeting accepted standards." 42 U.S.C. §3741(a)(17) and §3789e(b)(15) (Supp. 1980).

Pursuant to this mandate, the National Advisory Committee has included specific implementation recommendations in a number of standards including those relating to:

- —the criteria for referring persons to the intake unit [Standards 2.221-2.223 (law enforcement agencies) and 2.321-2.322 (nonlaw enforcement agencies)];
- —the criteria for taking juveniles into custody [Standards 2.231-2.233 (law enforcement agencies) and 2.33 (nonlaw enforcement agencies)];
- —jurisdiction over noncriminal misbehavior (Standard 3.112);
- —intake and custody decisions by the intake unit [Standards 3.143-3.145 (intake decisions) and 3.151, 3.153 and 3.154 (detention and emergency custody decisions)];
- —predisposition reports (Standard 3.187), the rights afforded juveniles subject to a dispositional order (Standards 4.42, 4.48, 4.410, and 4.411);
- —the procedures for and limits on disciplining, restraining and transferring juveniles placed in residential facilities (Standards 4.51-4.54, 4.61-4.62, and 4.71-4.73); and
- —the grievance procedures and ombudsmen programs which should be available to juveniles following disposition (Standards 4.81-4.82).

Many of these can be accomplished without major allocation of resources.

Set out below are recommendations regarding more comprehensive implementation strategies and the factors which the National Advisory Committee considered in developing them.

Framework for Decision Making

In assessing the possible mechanisms for implementing standards for juvenile justice and delinquency prevention, three considerations appear to be of prime importance:

1. Does the proposed strategy fall within the legal and practical authority of the Federal Government;
2. Are the resources available sufficient to support the proposed strategy; and
3. Does the proposed strategy contain adequate procedures for gaining state and local support for and participation in the implementation process?

1. *Does the proposed strategy fall within the legal and practical authority of the Federal Government?* The principal role of the Federal Government in the effort to strengthen and improve state and local juvenile justice and delinquency prevention systems is to provide strong leadership and necessary assistance. *See* Standards 1.131-1.134 (federal role and responsibilities); 3.114 (jurisdiction of the federal courts over delinquency); and 4.12 (federal role in supervision programs). Past implementation efforts that have attempted to mandate a sweeping set of federal standards have proven less effective than anticipated in areas such as juvenile justice, which are primarily the responsibility of state and local government, which are subject to major conflicts over objectives and goals, and for which there are few reliable means of measuring the impact of change. Although federally developed standards can provide direction on issues and policy of national concern, they cannot realistically be expected to anticipate the needs, structure, and particular priorities of each state and locality. Hence, any strategy has to demonstrate sensitivity to the nature of the social and political realities at the state and local levels.

2. *Are the resources available sufficient to support the*

proposed strategy? No matter how essential, the portion of federal, state, and local budgets that can be devoted to any purpose is limited. Thus, an implementation strategy that requires massive allocations of resources is impractical. For example, the personnel and funds required to monitor state and local compliance with mandated standards in all the areas covered by this report of the National Advisory Committee would be prohibitive. Thus, implementation strategies must incorporate some selection or prioritization process and provide for the pooling of resources and energies.

3. *Does the proposed strategy contain adequate procedures for gaining state and local support for and participation in the implementation process?* As noted earlier, juvenile justice and delinquency prevention are primarily a state and local responsibility. Accordingly, an implementation strategy must include incentives that will encourage states and communities to reassess the manner in which services are delivered to children and in which they deal with youth crime in light of the proposed standards, to identify the most serious problems, and to make the necessary procedural and substantive changes.

Recommended General Strategies

1. Under section 223 of the Juvenile Justice and Delinquency Prevention (JJDP) Act, 42 U.S.C. §5633 (Supp. 1979) and sections 402(b) and 1301 of the Justice System Improvement Act of 1979, 42 U.S.C. §§3742(b) and 3799(i) (Supp. 1980), state criminal justice councils, in order to receive formula grant funds, must prepare a state juvenile justice and delinquency prevention comprehensive plan. Such plans must provide, among other things, for an advisory group appointed by the governor and including representatives of local and state government, law enforcement, juvenile justice, youth services, public welfare, health, mental health, education agencies, private organizations concerned with the problems and activities of youth, and youth involved in the juvenile justice system. One-third of the members must be under age twenty-six. This structure appears to be a logical channel for the following standards implementation activities.

States, through their Juvenile Justice Advisory Groups should be asked to assess the recommended standards against their own needs, problems and experience, and identify priority areas. *See* Standard 1.123. Financial support and technical assistance as well as training pursuant to 42 U.S.C. §5651(e)(6) (Supp. 1979) should be provided by the Office of Juvenile Justice and Delinquency Prevention to the state Juvenile Justice Advisory Groups to assist them in carrying out these functions. These priorities identified by the state advisory group would then become the basis of a Coordinated State Juvenile Justice and Delinquency Prevention Plan designed to meet the planning requirements for JJDP Act funds and other federal youth programs such as those under the Comprehensive Employment and Training Act of 1973, 29 U.S.C. §§801 *et. seq.* (Supp. 1975), Title XX of the Social Security Act, 42 U.S.C. §§1397 *et. seq.* (Supp. 1979, and the Justice Systems Improvement Act, 42 U.S.C. §3793a (Supp. 1980). *See* Standard 1.122. One agency—in most cases the state criminal justice council—would serve as the lead agency in performing the planning and staff coordination functions.

At the same time, the Federal Interdepartmental Coordinating Council, *see* 42 U.S.C. 5616 (Supp. 1979), and individual agencies would be working to integrate federal funding and technical assistance programs, to promote coordination of federal agencies and personnel at the regional, state, and local levels, and to eliminate artificial barriers, conflicting requirements, and other impediments to the adoption of the standards.

This strategy meets the three criteria noted above. By linking implementation to the provision of federal funds and by having states set their own priorities, it conforms to federal legal and practical implementation authority. By utilizing and coordinating existing programs and agencies, it avoids the creation of new administrative entities and massive new funding programs, although some additional or redirected funds may be necessary to assist in fostering the coordinated planning process. Finally, the link between federal funds and standards' implementation together with the public interest in youth crime and delinquency prevention should provide the necessary incentives for state and local support.

2. The juvenile justice and delinquency prevention system includes many groups of professionals seeking to improve the system's effectiveness and fairness, and the subject of youth crime and its prevention is a matter of great public concern. The continuation of these systems—improvement activities by professional groups and the focusing of this public concern can greatly assist the efforts to gain adoption of the recommended standards. Hence, as a corollary to the above-described governmental planning strategy, national professional organizations should be encouraged to consider and, to the greatest extent possible, incorporate the recommended standards in their own accreditation programs and more richly detailed professional standards.

Although outside the purview of these implementation recommendations, another method through which implementation may be accomplished is litigation. Courts have and continue to play a role, often a leading one, in standards implementation and systems change. It is likely that in some instances in which other implementation efforts have failed, the standards may be adopted through judicial decree.

Conclusion

There should be no illusions about the effort that will be required to accomplish the planning, design, and coordinating activities recommended above. The energies and cooperation of individuals and agencies at all levels of government and in the private sector will be needed. However, the National Advisory Committee believes that these implementation recommendations, strategies, andstandards represent a workable and "effective program . . . to improve the quality of juvenile justice in the United States." (42 U.S.C. 3701) (Supp. 1980).

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